EXPLANATORY NOTES

Energy Act 2023

Chapter 52

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EXPLANATORY NOTES—ENERGY ACT 2023

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ENERGY ACT 2023

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Energy Act 2023 which received Royal Assent on 26 October 2023 (c. 52).

- These Explanatory Notes have been prepared by the Department for Business, Energy and Industrial Strategy in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

1 The aim of the Act is to help increase the resilience and reliability of energy systems across the UK, support the delivery of the UK's climate change commitments and reform the UK's energy system while minimizing costs to consumers and protecting them from unfair pricing.

2 To enable this, the Act is structured around three key pillars:

- Liberating investment in clean technologies.
- Reforming the UK's energy system so it is fit for the future.
- Maintain the safety, security and resilience of the UK's energy system.

3 In respect of liberating investment in new technologies, Parts 1, 2 ,3 and 4 of the Act include provisions to ensure the development of carbon dioxide transport and storage, hydrogen production, transport and storage, a low carbon energy system, to reduce emissions from industry, transport and heat. These measures include:

- Establishing an economic regulation and licensing regime for carbon dioxide (CO_2) transport and storage with the Office of Gas and Electricity Markets (Ofgem) as the economic regulator.
- Enabling the Government to implement and administer hydrogen and carbon capture business models including introducing a new hydrogen levy.
- Enabling the Oil and Gas Authority, whose business name is the North Sea Transition Authority, to require the retention, reporting and disclosure of relevant information from carbon storage licence holders.
- Enabling the implementation, via gas transporter licence conditions, of a Regulated Asset Base in respect of certain hydrogen pipeline projects.
- Enabling the establishment of a market-based low carbon heat scheme.
- Enabling the effective and safe delivery of a hydrogen village trial.
- Enabling the Gas Act 1986 to be modified by regulations in relation to, and for the purpose of facilitating or promoting, the production, transportation, storage and use of hydrogen.
- Excluding fusion energy facilities from nuclear site licensing requirements under the Nuclear Installations Act 1965.
- Enabling the support of recycled carbon fuels and nuclear derived fuels in renewable transport fuel orders under the Energy Act 2004.
- Providing powers for a revenue certainty scheme for sustainable aviation fuel.
- Providing for expansion of the types of greenhouse gas removals (GGR) which count towards UK carbon budgets including engineered removals.

4 In respect of system reform and consumer protection, Parts 5 – 11 of the Act include provisions to ensure market frameworks and governance arrangements are geared towards strengthening energy security and becoming a net zero energy system while minimising costs to consumers. These measures include:

- Establishing an Independent System Operator and Planner (hitherto known as the Future System Operator), an independent and first-of-a-kind body acting as a trusted voice at the heart of the energy sector.
- Reforming the current energy code governance framework including granting Ofgem new functions to provide strategic direction and oversight on codes and creating a new class of more independent code managers to deliver an improved system for consumers and competition.
- Enabling competitive tenders in onshore electricity networks.
- Enabling the Competition and Markets Authority to investigate more effectively the impacts of mergers between energy companies.
- Introducing a definition of multi-purpose interconnectors from which a new licensing and economic regime can be developed.
- Clarifying electricity storage as a distinct subset of generation in the 1989 Electricity Act.
- Removing obligation thresholds under the Energy Company Obligation scheme.
- Driving the rollout of smart meters across Great Britain.
- Regulating the heat network market.
- Introducing heat network zoning in areas where they are the most viable solution for decarbonising heat.
- Setting regulatory requirements for Energy Smart Appliances including enabling mandatory functionality for electric heating appliances and electric vehicle (EV) charge points and establishing a new regulatory framework for actors who control these devices.
- Ensuring the energy performance of premises regime is fit for purpose and reflects the UK's ambitions on climate change, including to support achieving the UK's target for net-zero greenhouse gas emissions by 2050.
- Strengthening the Energy Savings Opportunity Scheme.

5 In respect of the safety, security, and resilience of the UK energy system, Parts 12, 13 and 14 of the Act include provisions to guarantee a robust and resilient supply of core fuels for the UK, to ensure that the UK is a responsible nuclear state and take essential action in protecting the UK Continental Shelf while transitioning to net zero. These measures include:

- Reducing the risk of fuel supply disruption and improving fuel supply resilience in the core fuels sector.

- Allowing compensation to be delivered strategically for all relevant offshore wind activities making applications from late 2023, helping reduce the time it takes to develop new offshore wind projects, whilst maintaining high environmental standards.

- Ensuring that the offshore oil and gas environmental regulatory regime continues to be effective, to maintain current levels of environmental standards and facilitate the offshore oil and gas industry's transition to net zero.

- Amending the Petroleum Act 1998 to change the fee regime and cost recovery mechanism for the regulation and offshore decommissioning activities of oil and gas producers.

- Granting the Oil and Gas Authority, whose business name is the North Sea Transition Authority, additional powers to ensure the UK's oil and gas and carbon storage infrastructure remains in the hands of companies best able to operate or decommission it.

- Making expressly clear that certain nuclear sites located wholly or partly in or under the territorial sea adjacent to the UK require a licence and are regulated by the Office for Nuclear Regulation.

- Amending the regulatory framework for the final stages of nuclear decommissioning including bringing the UK into alignment with internationally agreed recommendations for ending nuclear third-party liability and allowing former nuclear sites to be delicensed earlier than at present.

- Enhancing the UK's nuclear third-party liability regime by enabling the UK's accession to the Convention on Supplementary Compensation for Nuclear Damage through amendments to the Nuclear Installations Act 1965.

- Amending the remit and powers of the Civil Nuclear Constabulary to ensure that the constabulary can support other critical infrastructure sites and assist other police forces.

- Bringing Nuclear Decommissioning Authority pensions into line with wider public sector pensions in moving from a final salary scheme to a career average scheme.

Policy background

Parts 1 and 2: Carbon Dioxide Capture, Transport and Storage etc and Hydrogen Production, Transport and Storage

6 Carbon Capture, Usage and Storage (CCUS) is a process involving the capture of carbon dioxide (CO_2), from industrial and commercial activities, as well as power generation, and its transportation for the purposes of permanent containment, for example in very deep subsurface rock formations, or reuse, for example in cement. CCUS can be applied to a range of processes including chemical refining, cement, and residual waste management processes, and is likely to

play an essential role in meeting the UK's statutory carbon emissions targets. The Climate Change Committee has described carbon capture and storage as "a necessity, not an option" for reaching net zero emissions[1].

7 The Government has committed to provide support for the deployment of two CCUS 'clusters' by the mid-2020s and a further two by the end of the 2020s. The Government's Net Zero Strategy, published in 2021, sets out the ambition to capture and store 20 to 30Mt of CO_2, which includes 6MtCO_2 of industrial emissions, per year, by 2030[2]. A new carbon capture industry could support up to 50,000 jobs by 2030, split across industry, power and the transport and storage network.

8 The Government consulted in 2019 on commercial models to pull through the investment needed to deploy CCUS at scale. The Government's response[3], published in 2020, set out that the proposed model for CO_2 transport and storage is one of economic regulation. This is because CO_2 pipeline transport and storage networks are likely to be operated as regional monopolies, encompassing a range of different network users and emitters operating under different commercial models. In this model, a transport and storage company would receive a licence from an economic regulator which grants it the right to charge users in exchange for delivering and operating the transport and storage network. Here the regulator-approved prices charged would reflect efficient costs and a reasonable rate of return based on the level of risk assumed by a transport and storage company.

9 The Government considers Ofgem to be the most appropriate entity to take on the role of economic regulator for CO_2 transport and storage. Part 1 of the Act establishes the duties and functions for Ofgem to act as economic regulator of CO_2 transport and storage and a framework for the economic licensing of CO_2 transport and storage activities.

10 The Oil and Gas Authority (OGA) and ministers in the Devolved Administrations (the Department for the Economy in Northern Ireland) remain the relevant licensing authorities for regulating CO_2 storage under the powers set out in the Energy Act 2008 to ensure the secure geological storage of CO_2.

11 To help meet the ambitions set out in paragraph 7, the Government confirmed development of the industrial carbon capture business model to provide carbon capture facilities with financial assistance to support the deep decarbonisation of industrial and commercial activities that often have no viable alternatives, such as chemicals, refining, cement, and residual waste management processes.

12 As a gas that can be used as a fuel without emitting harmful greenhouse gases, hydrogen will be critical in reducing emissions from heavy industry, as well as in power, transport, and potentially heat.

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1 https://www.theccc.org.uk/wp-content/uploads/2019/05/Net-Zero-The-UKs-contribution-to-stopping-global-warming.pdf

2 https://www.gov.uk/government/publications/net-zero-strategy

3 https://www.gov.uk/government/consultations/carbon-capture-usage-and-storage-ccus-duties-and-functions-of-an-economic-regulator-for-co2-transport-and-storage

13 Under the British Energy Security Strategy[4], the Government announced ambitions for up to 10GW of low carbon hydrogen production capacity by 2030, subject to affordability and value for money, with at least half of this from electrolytic hydrogen.

14 The Government consulted in 2021 on the commercial model to unlock private investment and address market barriers to deploy low carbon hydrogen production at scale. The Government's response[5], published in 2022, confirmed the design of a contractual producer-focused business model to provide revenue support to a range of low carbon hydrogen production pathways to facilitate hydrogen use in a broad range of sectors.

15 In the British Energy Security Strategy, the Government set out its intention to design new business models for hydrogen transport and storage. The Government consulted in 2022 on high-level design options for both the hydrogen transport business model and the hydrogen storage business model. The Government's response, published in 2023, set out minded to positions for the business models. An external subsidy mechanism will be required to support the business models. This external subsidy mechanism will be delivered through business model contracts. This external subsidy mechanism will be delivered through business model contracts. Alongside these contracts, it is considered that another element of the hydrogen transport business model should be a Regulated Asset Base (RAB) to facilitate and support the financing of certain hydrogen pipeline projects.

16 Part 2 of the Act introduces spending powers to provide financial assistance to support the establishment of CCUS, low carbon hydrogen production and hydrogen transport and storage. The Act also provides delegated powers to establish the detailed framework for business models, including the designation and duties of a counterparty to enter into and manage business model contracts with carbon capture entities, CO_2 transport and storage companies, low carbon hydrogen producers, hydrogen transport providers and hydrogen storage providers. It also provides powers to raise a levy or levies to fund the hydrogen business models – production, transport and storage. The hydrogen production business model will initially be Exchequer funded, with the intention to transition to levy funding. The Government will hold a public consultation before making regulations introducing the levy. A decision on funding for the hydrogen transport and storage business models has not yet been taken. Powers are also provided to appoint allocation bodies to administer future more competitive allocation processes for hydrogen production and carbon capture revenue support contracts.

17 Part 2 Chapter 5 establishes powers for the OGA to require carbon storage licensees to retain and report information and samples gathered as part of activities associated with the geological storage of carbon dioxide, and to enable the NSTA to publicly disclose this information after a suitable confidentiality period. Provisions in Part 2 will also allow the OGA to identify and discourage potentially undesirable changes of ownership and control of carbon storage licensees before they take place. This Part also provides the OGA with powers to require that relevant information acquired by carbon storage licensees as part of their licensed activities, is appropriately retained and reported, and is able to be publicly disclosed after a suitable confidentiality period. These

[4] https://www.gov.uk/government/publications/british-energy-security-strategy

[5] https://www.gov.uk/government/consultations/design-of-a-business-model-for-low-carbon-hydrogen

powers will ensure valuable information collected by storage licensees is appropriately preserved and, in due course, made available for the benefit of the sector more broadly.

Part 3: Hydrogen Pipeline Projects

18 Part 3 provides powers for the implementation, via gas transporter licence conditions, of a RAB in respect of certain hydrogen pipeline projects. A RAB is expected to form part of the hydrogen transport business model mentioned further above and these powers are intended to enable the implementation of a RAB to align and effectively operate with any accompanying external subsidy mechanism.

19 This Part also includes provisions regarding the inclusion and modification of conditions in a gas transporter licence so far as it authorises a person to convey hydrogen through pipelines in connection with the carrying on of a hydrogen pipeline project. These are intended to help ensure a level playing field across relevant licence holders and for new entrants to the hydrogen market.

Part 4: New Technology

Low-Carbon heat schemes

20 As set out in the 2021 Heat and Buildings Strategy,[6] meeting the UK's net zero target requires decarbonising the large majority of heat in buildings. For most buildings, this requires a transition from being heated by appliances which burn fossil fuels to the use of low-carbon technologies. Since nearly half of UK annual natural gas consumption is used for heating buildings, accelerating this transition will also reduce dependency on global fossil fuel markets.

21 The Act will give the Department for Energy Security and Net Zero's Secretary of State the powers to establish a scheme to encourage the sale and installation of low-carbon heating appliances, such as electric heat pumps.

22 The low-carbon heat scheme envisaged by these powers will play an important role in growing the supply chain for such technologies, through setting targets for certain companies. This will help, for instance, to strengthen the incentives to invest in bringing these technologies to market and promoting and expanding their uptake by consumers.

Hydrogen trials

23 Low carbon hydrogen could be one of a few key options for decarbonising heat in buildings, alongside more established technologies such as heat pumps and heat networks. The Government is working with industry, regulators, and others to deliver a range of research, development, and testing projects to assess the feasibility, costs, and benefits of using 100% hydrogen for heating. This work includes a programme of community trials. As set out in the Government's Heat and Buildings Strategy, the Government will support industry to deliver a neighbourhood trial by 2024; (preparation is underway, with the trial due to start in the second half of 2024); a village scale trial by 2025; and a potential hydrogen heated town before the end of the decade.

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[6] https://www.gov.uk/government/publications/heat-and-buildings-strategy

24 The trials, together with the results of a wider research, development and testing programme, will enable strategic decisions in 2026 on the role of hydrogen for heat decarbonisation and whether to proceed with a hydrogen heated town, as set out in the Hydrogen Strategy[7], and the Net Zero Strategy[8].

25 The hydrogen village trial will be led by a gas distribution network operator and will be a grid conversion trial. This means it will involve disconnecting a section of the local gas grid from the natural gas supply and connecting it instead to a hydrogen supply. The Act will enable this by including provisions that allow trial operators to deliver the trial safely and effectively and allow for additional consumer protections to be put in place.

Hydrogen

26 Hydrogen is a low carbon solution which can help the UK achieve net zero by 2050, and our Sixth Carbon Budget target by 2035. The hydrogen economy is in its infancy and will take time to establish at scale. While hydrogen is already a gas for the purpose of the Gas Act 1986, the implications of this at scale cannot be fully tested without transport and storage projects being operationalised. As a result, there is some uncertainty as to whether every provision applying to natural gas in the Gas Act will technically work for hydrogen or whether unforeseen problems will arise that require a provision be disapplied or modified in respect of its application to hydrogen.

27 This power enables the Secretary of State to make regulations that provide for any provisions of the Gas Act 1986 not to apply, or apply with modifications, in relation to the production, transportation, storage or use of hydrogen. It may only be used for the purpose of facilitating or promoting the production, transportation, storage or use of hydrogen. Fusion Energy.

28 Fusion energy facilities are not identified in the Nuclear Installations Act 1965 as sites that require a nuclear site licence. This section amends the Nuclear Installations Act 1965 to make the exclusion of fusion energy facilities explicit: to make clear that they will not require nuclear site licences and regulation by the Office for Nuclear Regulation. This will enable a regulatory framework for fusion that is appropriate and proportionate to the overall hazard of a fusion energy facility.

Renewable Transport Fuels

29 The Energy Act 2004 currently provides powers for the Secretary of State for Transport to create Renewable Transport Fuel Orders. Such orders are support schemes that encourage the supply of renewable transport fuels. New technologies are being developed which can produce low carbon fuels, including those critical to Sustainable Aviation Fuel production, from non-renewable energy sources whilst providing comparable greenhouse gas emissions savings to renewable fuels. This section extends the range of fuels that can be supported under renewable transport fuel orders to include specific non-renewable fuels, namely recycled carbon fuels and nuclear derived fuels.

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[7] https://www.gov.uk/government/publications/uk-hydrogen-strategy

[8] https://www.gov.uk/government/publications/net-zero-strategy

Renewable Liquid Heating Fuel Obligations

30 Heat in buildings is currently responsible for 23%[9] of the UK's greenhouse gas emissions. Decarbonising the way we heat our buildings is essential for reducing our reliance on fossil fuels and combating climate change. We expect most off-grid properties will ultimately switch to heat pumps as these are a proven technology which have been installed in high numbers in other countries. Renewable liquid fuels may play a role in decarbonising off-grid buildings that are not suitable for low temperature heat pumps.

31 Renewable liquid fuels are more expensive than existing fossil fuels used in homes off the gas grid. To make these fuels available at affordable prices to customers off the gas grid, it may be necessary to impose obligations on suppliers of off gas grid heating fuels.

32 The Act will give the Department for Energy Security and Net Zero's Secretary of State the powers to establish a scheme to encourage the sale of renewable liquid heating fuels.

33 The scheme enabled by these powers could play an important role in increasing the affordability and availability of these fuels for heating off gas grid homes, through setting targets for certain off gas grid heating fuel suppliers, should that be necessary to support our net zero ambitions.

Part 5: Independent System Operator and Planner

34 The Government committed, in the Energy White Paper 2020[10] and Future Systems Operator consultation response 2022[11], to update the governance of the energy system to reflect the ambition required to build a net zero energy system. There are many plausible paths to a fully decarbonised system and each of them require significant investment in infrastructure and innovation. This creates an ever-greater requirement for expert and coordinated strategic advice and recommendations.

35 This Act makes provision for the establishment of an Independent System Operator and Planner (ISOP) within the electricity and gas supply sectors. The ISOP is to be a public sector body, with operational independence from the Government, with responsibilities for planning the development of the electricity and gas transmission systems and operation of the electricity transmission system. This body will also take on a range of additional net zero focused roles, helping drive a more open, flexible and efficient system, and is expected to result in a net saving on energy bills.

36 Many of the functions that the ISOP will undertake are currently carried out by licensed operators owned by National Grid plc. Provision is made for the transfer of the whole or parts of these operators out of their current ownership as part of the establishment of the ISOP, with the overall aim of increasing independence and removing potential conflicts of interest.

37 The Act also makes provision for conferring on the ISOP duties, powers and functions, and enabling its regulation (by licence) by the Gas and Electricity Markets Authority (GEMA).

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[9] BEIS (2021) statistics, 'Final UK greenhouse gas emissions national statistics: 1990 to 2019' https://www.gov.uk/government/statistics/final-uk-greenhouse-gas-emissions-national-statistics-1990-to-2019

[10] https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future

[11] https://www.gov.uk/government/consultations/proposals-for-a-future-system-operator-role

Part 6: Governance of Gas and Electricity Industry Codes

38 The Act makes provision for the establishment of a new governance framework for the energy codes. It does this by granting GEMA, Ofgem's decision-making board, a collection of new code-related functions, such as the ability to direct strategic change across the codes, and by creating code management as a new licensable activity. It also includes transitional powers that will make it possible for the GEMA to facilitate the necessary changes to implement the new code governance framework.

39 The energy codes are the detailed technical, operational and commercial rules of the electricity and gas systems, which cover areas like generation, transmission, distribution, supply and retail. They are documents that in most cases act as multi-lateral contracts between industry signatories, each of which is governed by some form of industry-led panel or board with the support of an appointed 'code administrator'.

40 In the Energy White Paper 2020,[12] the Government stated that the energy codes needed to be overhauled to allow Great Britain to transition to a clean energy system and to enable strategic alignment with its net zero ambitions. The Government and the GEMA published two joint consultations on energy code reform: the first[13] in 2019 and the second[14] in 2021. Both consultations built on the recommendations of a 2016 report by the CMA which found that the existing system of energy code governance was adversely impacting competition due to conflicting interests; a lack of incentives to deliver policy changes; and the GEMA's insufficient ability to influence code change processes.

Part 7: Market Reform and Consumer Protection

Principal objectives of Secretary of State and the Gas and Electricity Markets Authority

41 GEMA, the governing body of Ofgem, has its duties set out in the Gas Act 1986 and Electricity Act 1989.

42 The Secretary of State and the Authority are each given a principal objective by S4AA Gas Act 1986 and S3A Electricity Act 1989 which applies when carrying out their respective functions under Part 1 of the Gas 1986 and Part 1 of the Electricity Act 1989. This principal objective is to protect the interests of existing and future consumers taken as a whole when carrying out those functions.

43 The Act amends the GEMA's duties by including reference to the net zero and carbon budgets targets set out in the Climate Change Act 2008.

44 This will require Ofgem and the Secretary of State to consider how decisions may assist the Secretary of State in meeting the government's net zero and carbon budget targets, when carrying out their functions under Part 1 of the Gas 1986 and Part 1 of the Electricity Act 1989.

45 Amending the GEMA's duties in this way will ensure that the regulator is clear that it has a duty to assist the government to achieve net zero and carbon budget targets.

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[12] https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future

[13] https://www.gov.uk/government/consultations/reforming-the-energy-industry-codes

[14] https://www.gov.uk/government/consultations/energy-code-reform-governance-framework

Competitive tendering for electricity projects

46 In order for the UK to reach net zero by 2050 and achieve independence from imported fossil fuels the Government will fully decarbonise the electricity system by 2035, subject to security of supply. Alongside this, the Government also expects a doubling of electricity demand by 2050, as sectors like transport and heat switch to electricity as a fuel source. To accommodate this, there needs to be a significant increase in the amount of electricity network infrastructure in Great Britain.

47 Under the current system, privately-owned electricity network companies build, own and operate electricity network infrastructure across Great Britain. These companies are regional monopolies, regulated by Ofgem, the independent energy regulator, to undertake their network owner role in an efficient way in the interest of consumers. Ofgem does this through benchmarking the network companies against one another to set their allowed revenues. There is an inherent information asymmetry in this process due to the closed nature of the market, and as such regulation may not fully realise benefits to consumers when setting allowed costs. In addition, as only a few network companies have access to and control over the electricity network, innovation can be limited by not allowing third parties to contribute to new ideas and develop them on the network.

48 There is an existing competition regime in place for offshore transmission assets which has saved consumers over £800 million to date. The measures in the Act will amend the Electricity Act 1989 to extend this competitive process to enable competition to identify onshore network solutions, including smart and flexible options as well as traditional wire-based solutions.

49 Creating new competitive markets in this way will provide new opportunities to invest in networks and should improve efficiency in investment, foster innovative solutions to network needs, including increasing the opportunities for smart and flexible solutions, as well as reducing costs to consumers. This is also expected to encourage greater levels of inward investment to help provide sufficient additional electricity network capacity to meet growing demand in Great Britain.

Mergers of energy network enterprises

50 Energy network enterprises are regional monopolies, meaning that each serves different areas of Great Britain exclusively. As such, there is no direct competition between them. The energy regulator, Ofgem[15], licenses energy network enterprises operating in Great Britain and sets their price controls through 'comparative benchmarking', which involves comparing data from all energy network enterprises.

51 The price control is the main method that Ofgem uses to regulate the amount that energy network enterprises can charge suppliers, who in turn pass the costs on to consumers. When network ownership is consolidated into fewer enterprises through mergers and acquisitions there is a potential detriment to Ofgem's ability to carry out effective comparative benchmarking when setting the price control, as there is a reduction in independent entities that can be compared. For example, if the number of independent network enterprises is reduced, then this may reduce the

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[15] Ofgem is a non-ministerial government department governed by GEMA and to which many of GEMA's statutory functions are delegated (in respect of which it acts on behalf of GEMA). These Explanatory Notes occasionally refer to Ofgem, as it will carry out the duties bestowed on GEMA through the energy networks special merger regime established by the Act.

diversity of approaches and data sets available, impacting the way that Ofgem sets efficiencies and requires service quality improvements.

52 Section 204 and Schedule 16 amend the Enterprise Act 2002 to enable the CMA to investigate energy network enterprise mergers in Great Britain effectively. The legislation will mean that, where the energy network enterprise acquired has a GB turnover of over £70 million, and it is merging with another energy network enterprise that holds the same type of licence, then the CMA must refer the merger to a CMA inquiry group, comprised of CMA panel members, for investigation if conditions are met. The main condition is that the merger has substantially prejudiced, or may substantially prejudice, Ofgem's ability to carry out its functions to make comparisons when setting price controls. The CMA may decide not to refer if there is a consumer benefit arising from the merger that outweighs this prejudice or, for mergers that have not yet completed, the merger is not sufficiently far advanced or sufficiently likely to proceed to justify the reference.

53 Ultimately, if the CMA group concludes that there has been or may be a prejudicial outcome, the CMA will be required to take action to remedy, mitigate or prevent the prejudice and any adverse impacts which have resulted or may result from the merger. In this instance, the CMA will be empowered to place restrictions on the merger, up to and including preventing it from taking place, if this action is reasonable and practicable. The CMA already has these remedial options under the existing merger regime (which assesses if a merger has or may result in a substantial lessening of competition), but the CMA cannot access/use these remedial options effectively for energy networks due to their unique nature as regional monopolies that do not compete for market share. There are opportunities for the merging enterprises to offer undertakings in lieu of a referral to investigation by a CMA group; for example, the enterprises could offer to guarantee no price impacts to consumers for an agreed period, or ring fence parts of the business to protect operational independence.

Multi-purpose Interconnectors

54 Multi-purpose interconnectors (MPIs) are a form of Offshore Hybrid Assets which combine electricity interconnection between Great Britain and other jurisdictions with direct connections to offshore generation in Great Britain waters, such as wind energy. The Act will create a new licensable activity for MPIs. Operating an MPI without a licence will be prohibited and Ofgem will be empowered to grant licences.

55 As set out in '*Powering Up Britain: Energy Security Plan*' in April 2023, Government committed to "work with Ofgem, developers and the UK's European partners to realise at least 18 gigawatts of interconnector capacity by 2030", over double the current capacity of 8.4 gigawatts and to deliver the first MPI for the UK. The Government has also set targets to achieve 50 gigawatts of offshore wind generation by 2030, and net zero by 2050.

56 Increasing the level of interconnection to 18 gigawatts has been shown to facilitate trade with other markets, reduce consumer bills, enhance the flexibility of the energy system, and support increased levels of intermittent renewable energy such as offshore wind. The UK Government supports interconnection as a core part of its energy strategy, due to its benefits in helping to provide an electricity supply that progresses towards the Government's net zero decarbonisation goal in a low cost and secure way.

57 In comparison to separate interconnectors and point-to-point offshore wind connections, MPIs offer increased benefits in terms of reduced capital expenditure, reduced wind curtailment, and fewer coastal landing points.

Energy Intensive Industries

58 On 23 February 2023, the Government announced the British Industry Supercharger, a decisive set of measures to make Britain's strategic Energy Intensive Industries (EIIs) more competitive and tackle the challenge of indirect carbon leakage. This is targeted to be achieved by addressing three areas of the domestic energy system which together contribute to higher electricity costs for GB EIIs. Sections 211 and 212 refer to the third of these measures which aims to reduce electricity prices for EIIs by £10/MWH through the creation of the Network Charging Compensation Scheme which will compensate EIIs for a portion of their network costs. The sections will also establish a levy on licensed electricity suppliers to fund the compensation payments.

59 In recent years, GB EIIs have faced the steepest industrial electricity prices in Europe, even with existing Government support schemes applied, primarily due to a long-term disparity in network and policy costs. On average, Ofgem analysis found that GB EIIs faced electricity prices that were 50% higher than their EII counterparts in France and Germany and nearly 40% higher than in the Netherlands.

60 This is a particular issue for EIIs, for whom the resulting cost differential in electricity prices puts them at an international competitive disadvantage and increases the risk of having to rely on import markets, sourcing goods from territories with less stringent climate policies which would come with associated job losses and a loss of investment and increases the risk of carbon leakage.

61 Carbon leakage is defined as the movement of production and associated emissions from one country to another due to different levels of decarbonisation effort through carbon pricing and climate regulation. As a result of carbon leakage, the objective of decarbonisation efforts would be undermined.

62 The industries impacted include companies in strategically important sectors such as steel, metals, chemicals, paper and other foundational industries that employ hundreds of thousands of skilled workers across the UK and support many more in the supply chain. This puts the UK at risk of significant job loss and disinvestment in these sectors, and means the UK is disadvantaged in attracting inward investment, as similar costs are exempted from most energy intensive industries in comparable neighbouring countries.

Electricity Storage

63 Electricity storage is a key technology in the transition to a smarter and more flexible energy system and will play an important role in helping to reduce emissions to net zero by 2050[16]. Technologies such as electricity storage, demand side response and interconnectors can provide flexibility to the system, by shifting when electricity is generated and shifting demand from peak

[16] https://www.gov.uk/government/publications/transitioning-to-a-net-zero-energy-system-smart-systems-and-flexibility-plan-2021

times. Flexibility in the energy system is essential to the integration of high volumes of low carbon power, heat, and transport. Analysis carried out by the Government estimated that flexibility could reduce system costs between £30 to 70 billion from 2020 to 2050[17].

64 In July 2017 the Government and Ofgem published the first Smart Systems and Flexibility Plan,[18] this was followed by a Progress Update to the Plan[19] in 2018, and a second Smart Systems and Flexibility Plan[20] in July 2021. These documents set out actions for the Government, Ofgem and industry to support the transition to a smarter and more flexible system, including removing barriers to electricity storage. One of the commitments from the 2017 Smart System and Flexibility Plan, re-iterated in the 2021 Plan was to define electricity storage in primary legislation.

65 The regulatory framework for electricity was not built with technologies such as electricity storage in mind. This has led to a lack of legal clarity over its treatment, creating a barrier to its deployment. To some degree, clarity has been achieved in relation to securing planning consent for electricity storage, but further clarity is needed for electricity storage to be developed, providing certainty to developers and investors.

66 The intention of formalising storage as a distinct subset of generation within the Electricity Act 1989 is to remove the current ambiguities and provide clarity and certainty over its treatment within the existing frameworks and possible future frameworks. The proposed definition is supported by responses to the Government and Ofgem's Call for Evidence on a smart, flexible energy system[21]. This approach avoids unnecessary duplication of regulations while still allowing specific regulations to be determined for storage assets, in the shortest possible timeframe.

Energy Company Obligation

67 The Energy Company Obligation (ECO) places an obligation on energy suppliers to install energy efficiency and heating measures in England, Scotland and Wales and is focused on providing support primarily to low income and vulnerable households. Suppliers meet their obligation by using their own in-house installation arms or by contracting with a third party to find eligible households and install measures and are likely to seek to pass these costs onto customer bills.

68 Since ECO came into effect, there has been a large increase in the number of suppliers in the market and therefore those obligated under ECO. Currently a potential market distortion exists where some suppliers are obligated, and others are not. This means non-obligated suppliers do not incur these costs as compared to larger, obligated suppliers.

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17 https://www.gov.uk/government/publications/transitioning-to-a-net-zero-energy-system-smart-systems-and-flexibility-plan-2021

18 https://www.gov.uk/government/publications/upgrading-our-energy-system-smart-systems-and-flexibility-plan

19 https://www.gov.uk/government/publications/upgrading-our-energy-system-smart-systems-and-flexibility-plan

20 https://www.gov.uk/government/publications/transitioning-to-a-net-zero-energy-system-smart-systems-and-flexibility-plan-2021

21 https://www.gov.uk/government/consultations/call-for-evidence-a-smart-flexible-energy-system

69 In the Energy White Paper 2020,[22] the Government committed to reducing the participation threshold for ECO, subject to not introducing disproportionate costs for smaller suppliers. If this was to be done currently (with no buy-out available) it could cause financial hardship for those smaller suppliers who are not able to benefit from economies of scale.

70 This Act will expand the powers for the ECO scheme to give energy suppliers the option to meet their ECO obligations simply by making a payment to an approved third party for an approved purpose, therefore reflecting the Government's commitment to establish a fair and competitive market by allowing smaller suppliers to fulfil their ECO obligation in a more cost-effective way.

71 Once a buy-out mechanism is established, the intention is that all suppliers will be obligated under ECO, with only a few exemptions for the very smallest suppliers where the cost of administration would be disproportionate, due to their customer numbers and supply volumes being too low. This will address the current issue of potential market distortion without placing undue financial strain on smaller suppliers.

Smart meters

72 The Energy Act 2008, the Electricity Act 1989 and the Gas Act 1986 provide the Secretary of State a number of powers in relation to smart metering including to: make activities relating to smart metering licensable; modify gas and electricity licence conditions and industry codes; and veto any proposal by Ofgem to consent to the transfer of the smart meter communication licences.

73 The Government has used the first of these powers to make the provision of the GB-wide smart meter communication service licensable, and the second to develop the regulatory framework. The regulatory framework continues to develop to facilitate the rollout of smart meters in Great Britain. The third power has not yet been used but is provided in order to maintain regulatory stability and government oversight of smart metering.

74 These powers are currently due to expire on 1 November 2023. This Act provides for these powers to continue to be available to the Secretary of State for the Department for Energy Security and Net Zero for a further five years until 1 November 2028. This will enable the Secretary of State to intervene where required to drive the rollout of smart meters in line with the annual targets imposed on gas and electricity suppliers through licence conditions for the 4 years to 2025. The extended timeframe will also enable the Secretary of State to ensure that the benefits enabled by the rollout can be fully realised, including through a post-implementation review of the rollout after 2025.

Part 8: Heat Networks

75 Heat networks are a crucial part of how the UK will reach its net-zero targets as they are one of the most cost-effective ways of decarbonising heating. There are over 14,000 heat networks in the UK, providing heating and hot water to approximately 480,000 consumers. The Climate Change Committee, in its advice on the fifth carbon budget,[23] estimated that around 18% of UK heat could come from heat networks by 2050 to support cost-effective delivery of the UK's carbon targets (up

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[22] https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future

[23] https://www.theccc.org.uk/publication/the-fifth-carbon-budget-the-next-step-towards-a-low-carbon-economy/

from around 2% currently). The measures within this Act will drive forward the growth and decarbonisation of the market whilst ensuring consumers receive the same level of protections afforded to other energy consumers.

76 Currently, there are no sector specific protections for heat networks consumers. In its 2018 heat networks market study,[24] the CMA found that, although on average heat networks deliver a comparable service to individual heating systems, there was a sufficient minority of consumers who receive significantly worse outcomes and government should therefore regulate the sector. These measures will deliver on this recommendation and the commitment in the 2020 Energy White Paper to regulate the sector and will extend Ofgem's role to cover heat networks. As the regulator Ofgem will help to ensure consumers get a fair price and reliable supply of heat.

77 In the Heat and Buildings Strategy[25] and Net Zero Strategy[26] , the Government committed to invest £338m in the Heat Network Transformation Programme, and to enable heat network zoning to create a step-change in low-carbon heat network market growth. The measures in this Act contain key zoning provisions and will facilitate central and local government working together, with industry and local stakeholders, to identify and designate areas within which heat networks are expected to be the lowest cost solution for decarbonising heat. This will help to accelerate deployment of heat networks by enabling long term planning and coordination between stakeholders and increasing investor certainty. The proposals are expected to deliver an additional 7% of England's space and water heating demand through low carbon heat networks by 2050 and save 14.3 million tonnes of CO_2 emissions over carbon budgets 4 to 6 (2023 to 2037).

Part 9: Energy Smart Appliances and Load Control

78 Transitioning to a smart and flexible energy system is essential to improving energy security, reducing consumer bills, enabling new and innovative industries to flourish, and meeting the UK's net zero targets. A smart system could reduce costs by up to £10 billion a year by 2050, by reducing the amount of new generation and network infrastructure needed to meet increased electricity demand.

79 In a smart and flexible system, consumers can shift their electricity usage to times when it is beneficial for the energy system and be rewarded for doing so by saving money on their energy bills. This is often termed "Demand Side Response" (DSR), and the activity of sending signals to Energy Smart Appliances (ESAs) to control their consumption is referred to as "load control." ESAs are connected devices such as smart electric heating appliances, batteries, and smart Electric Vehicle (EV) charge points, which can adjust their energy consumption to help deliver DSR.

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[24] https://www.gov.uk/cma-cases/heat-networks-market-study

[25] https://www.gov.uk/government/publications/heat-and-buildings-strategy

[26] https://www.gov.uk/government/publications/net-zero-strategy

80 In line with the commitments set out in the Smart Systems and Flexibility Plan (2021)[27] and the Energy White Paper 2020[28], the Act will allow the Government to establish a new regulatory framework for smart energy. This includes provisions to set regulatory requirements for ESAs, to mandate that electric heating appliances must have smart functionality and to require certain activities related to load control to only be carried out by persons holding licences for those activities. In addition, the Government will take new powers to mandate smart functionality for smart EV charge points, in addition to those in the Automated and Electric Vehicles Act 2018, to ensure cohesive regulation across all ESAs.

81 As the uptake of ESAs and related services increases, new risks such as cyber security and grid instability need to be mitigated. Furthermore, without intervention consumers may become locked-in to a particular service provider when they buy an appliance, or locked-out from certain services or tariffs. These new measures will enable the Government to ensure the electrification of heat and transport in particular can be delivered securely and at the lowest cost, saving consumers money on their energy bills while protecting the energy system.

Part 10: Energy Performance of Premises

The Energy Performance of Premises

82 The Act includes sections which will give the Secretary of State, Scottish Ministers, and the Department of Finance in Northern Ireland the power to make changes to their existing Energy Performance of Buildings (EPB) regimes to ensure that they are fit for purpose and reflect the UK's ambitions on climate change, including to support achieving the UK's target for net-zero greenhouse gas emissions by 2050. The future regulations dealing with the energy performance of premises across the UK will need to play an increasingly important role if the UK is to achieve this goal. Energy certificates provide consumers, building owners and occupiers, and third parties with information on the energy performance of the premises stock and support effective decision-making on improving the energy efficiency of premises. "Premises" is defined as a building or a part of a building, such as a private home or apartment and includes any equipment, systems or facilities used by a building or part of a building, such as air-conditioning units, which are subject to separate energy certification under the existing EPB regime.

83 The current EPB regime derives from EU Law and is reflected in the Energy Performance of Buildings (England and Wales) Regulations 2012 (S.I. 2012/3118) (the EPB Regulations 2012), the Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008 (S.I. 2008/170) and Energy Performance of Buildings (Scotland) Regulations 2008 (SSI 2008/309). Previously, Section 2(2) of the European Communities Act 1972 permitted the Secretary of State to make provisions for the purpose of implementing any EU obligation, including the power to legislate by means of orders, rules, regulations or other subordinate instruments. The EPB regime was largely implemented in the UK using this power. Pursuant to the European Union (Withdrawal) Act 2018, section 2(2) was repealed. The current EPB regime is classed as Retained

27 https://www.gov.uk/government/publications/transitioning-to-a-net-zero-energy-system-smart-systems-and-flexibility-plan-2021

28 https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future

EU Law as it was derived from EU Law. It therefore falls under the scope of the Retained EU Law (Revocation and Reform) Act 2023. The new power in the Energy Act will provide a replacement power, enabling the Scottish, Northern Irish and UK governments to amend, revoke or replace their existing EPB regimes to ensure they continue to meet UK-specific objectives. The power includes the power to make regulations requiring the assessment, certification and publication of information relating to the energy efficiency and energy usage of premises.

Part 11: Energy Savings Opportunity Schemes

84 The Act includes provisions which will give the Secretary of State the power to make changes to the existing Energy Savings Opportunity Scheme (ESOS). ESOS currently requires large undertakings (businesses) as defined under the Companies Act 2006, and small or medium undertakings that are in the same corporate group as a large undertaking, to carry out an energy audit at least once every four years. This audit must cover the energy used in their buildings, transport and industrial processes. Following the audit, recommendations must be made on cost-effective energy saving measures which will enable the undertaking to improve its energy efficiency. Audits must be either carried out or reviewed by approved assessors who meet the competence requirements in Publicly Available Specification 51215.

85 ESOS is important to the UK's plans to meet net zero targets and reduce energy costs for businesses. The scheme helps businesses by providing information on cost-effective actions they can take to improve their energy efficiency; information having been identified as a key barrier to business energy efficiency. The existing scheme's net benefit is estimated at £1.6 billion; with the costs of audits expected to be significantly outweighed by the savings from the proposed recommendations.

86 The requirements for the current ESOS scheme are set out in the Energy Savings Opportunity Scheme Regulations 2014. As part of the EU Exit, the European Communities Act 1972, which provided the primary powers to amend the 2014 ESOS regulations, was repealed. This means no changes to the regulations can currently be made. The new powers in the Act will provide replacement powers, enabling the Government to amend or replace the existing ESOS regulations, subject to any consultation requirements, to ensure the ESOS scheme continues to meet UK-specific objectives.

87 An independent evaluation and post-implementation review of the scheme in 2020 and a Business, Energy and Industrial Strategy (BEIS) select committee report in 2019 both identified opportunities to improve the scheme, and the scheme also needs updating to reflect changes such as the UK's 2050 net zero target.

88 The government consulted[29] in 2021 on making changes to strengthen ESOS and in the 2022 government response[30] committed to implementing four core options to:

- Strengthen requirements for audits and make them more standardised,
- Improve the quality of ESOS audits,
- Add a mandatory net zero element to the audits in future phases, and
- Require public disclosure of high-level recommendations by participants.

89 The government also committed to consulting again before introducing any secondary legislation to cover two longer-term options to:

- Extend the scheme to Medium-Sized Enterprises, and
- Mandate action to improve energy efficiency.

90 The powers set out in these sections will allow regulations to be made to cover both changes the government has announced following the consultation via amendment of the existing scheme, as well as enable the current scheme to be maintained. The estimated total discounted energy bill savings to businesses from the announced changes over the period 2024 to 2037 is £1.5 billion.

Part 12: Core Fuel Sector Resilience

91 This part of the Act relates to measures which will help ensure that the resilience of the UK core fuel supply system is maintained, and which will apply to core fuels and core fuel activity. Core fuels in this measure are crude oil-based fuels and renewable transport fuels. Core fuel activity is the storage, handling, carriage, transport, conveyance, processing, or production of such fuels in the UK, which contributes to the supply of core fuels to consumers or persons carrying on business in the UK. Currently, crude oil-based fuels provide >90% of the energy for transport and so this subsector will initially provide the majority of persons likely to be within the scope of this Part. Crude oil-based fuels are also used by more than 1.5 million homes for heating. As the UK economy transitions towards net zero greenhouse gas emissions, the balance of this will change, with renewable transport fuels likely to grow in importance.

92 A consultation held in 2017 investigated the resilience of the sector and identified a substantial level of risk to fuel supplies caused by changes to the industry over many years. Detail of the economic case is set out in the impact assessment that accompanies this Act.

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[29] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/999452/strengthening-energy-savings-opportunity-scheme-consultation.pdf

[30] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1094702/energy-savings-opportunity-scheme-consultation-govt-response.pdf

93 The supply of fuels is largely unregulated and has no central system coordinator. There is only limited regulation which addresses the risks to the supply of fuel before a state of emergency is declared. Examples of such limited sector regulation include: the National Security and Investment Act 2021 which now covers acquisitions of major core fuel sector companies; the Offshore Safety Act 1992 which allows the Department for Energy Security and Net Zero Secretary of State to direct the operator of an oil refinery for the purpose of preserving its security; and the Network and Information Systems Regulations 2018, to boost the overall level of security (both cyber and physical resilience) of network information systems of certain companies which provide essential services including in the oil sector.

94 Following consultation, full regulation of the sector (i.e., creating a licensing regime) was considered inappropriate as the sector has no existing monopoly and the recent Competition and Markets Authority 'Road fuel market study' did not recommend a sector regulator. However, while the Government works closely with industry on a voluntary basis to try to address issues relating to core fuel sector resilience and risks to security of core fuel supplies as they arise, market participants have repeatedly told the Government that competition concerns remain a barrier to full co-operation on a voluntary basis, thus requiring legislative intervention.

95 The purpose of the measures is to improve the resilience of the sector, reduce the risk of disruption to economic activities from the loss of fuel supplies, and reduce the risk of emergencies affecting fuel supplies. The intention is to give the Government powers to take pre-emptive action to encourage the sector to build resilience rather than respond to an emergency. The principal measures provide for powers to require information and to direct certain entities to take action to maintain or improve, or reduce risks to, resilience or continuity of supply of core fuels. The information powers will allow the Government to identify fuel supply risks. The powers of direction will allow the Government to support the industry in ensuring resilience ahead of any potential crisis and within the structure of the core fuel supply market, thereby reducing the need for the use of emergency powers. This is accompanied by a funding power if required.

Part 13: Offshore Wind Electricity Generation, Oil and Gas

Offshore Wind Electricity Generation

96 The Act provides primary powers to implement the Offshore Wind Environmental Improvement Package. This package will address the impacts of offshore wind infrastructure in the marine environment and help to speed up the consenting process for offshore wind. These powers will enable the Secretary of State (and, in certain circumstances, Scottish Ministers, Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland) to make provision in regulations to tailor the assessment of the environmental effects of offshore wind developments on protected sites. Where measures are required to compensate for damage to the national site network or a protected marine area, these sections will allow compensation to be delivered by developers working together if that is more appropriate through "strategic compensation." The powers will enable future delivery of a Marine Recovery Fund(s), which will be an optional mechanism that developers can choose to use to deliver their compensatory measures.

Offshore Oil and Gas (Habitats and Arrangements for Responding to Marine Oil Pollution)

97 The Act provides powers to ensure that the offshore oil and gas environmental regulatory regime remains fit for purpose by allowing the future introduction of changes through secondary legislation. The delegated powers would ensure that the Secretary of State for Energy Security and

Net Zero is able to adequately: (i) respond to changes in policy delivery required to meet the challenges of achieving net zero, including extending regulatory regimes for habitats assessment and emergency oil pollution planning and response to new offshore activities, such as hydrogen production and storage; (ii) implement changes, resulting from any future court judgments; and (iii) implement lessons learned from any future offshore incident.

Oil and gas cost recovery

98 It is a fundamental principle of the decommissioning regime that a person who is responsible for developing or operating an offshore installation or pipeline should also be responsible for decommissioning at the end of its useful life. The Department for Energy Security and Net Zero currently has powers to charge those responsible for offshore installations and pipelines fees at two points in time, in connection with its regulatory functions in approving and revising offshore (oil and gas and carbon storage) decommissioning programmes. Due to the increasing scale of offshore decommissioning activities and the associated complexity and duration of the regulatory functions associated with them, the current cost recovery mechanism is no longer fit for purpose. This measure will make amendments to future proof the cost recovery mechanism in line with the polluter pays principle of environmental law.

Change in control of licensee

99 The Oil and Gas Authority (OGA) cannot currently prevent undesirable changes of ownership and control of petroleum licensees before they happen. It can only examine and seek to remedy them after the event.

100 The Act will allow the OGA to identify and discourage potentially undesirable changes of ownership and control before they happen. This will help ensure that the UK's oil and gas infrastructure remains in the hands of companies with the best ability to operate it.

Part 14: Civil Nuclear Sector

Licensing a Geological Disposal Facility Beneath the Seabed

101 A Geological Disposal Facility (GDF) is a highly engineered facility capable of isolating radioactive waste within multiple protective barriers, deep underground, so that no harmful quantities of radioactivity ever reach the surface.

102 In its 2018 policy paper, Implementing geological disposal – working with communities: An updated framework for the long-term management of higher activity radioactive waste,[31] the Government reiterated its commitment to geological disposal as the best means to manage the most hazardous radioactive waste for the long term. In the same policy document, the Government also reiterated that a GDF would be a nuclear installation under the Nuclear Installations Act 1965 and would therefore require a licence from the Office for Nuclear Regulation (ONR).

[31] https://www.gov.uk/government/publications/implementing-geological-disposal-working-with-communities-long-term-management-of-higher-activity-radioactive-waste

103 The process to find a location for a GDF is underway and there is interest from communities in locating a GDF off the coast deep below the seabed. The measure in the Act makes clear that certain nuclear sites, located wholly or partly in or under the sea (within the boundaries of the territorial sea adjacent to the UK) are required to be licensed and made subject to regulatory oversight by the ONR in Great Britain and by the Secretary of State in Northern Ireland. As the ONR's powers in relation to nuclear sites are principally set out in the Nuclear Installations Act 1965 and the Energy Act 2013 (EA 2013), amendments to both of these Acts are required. While the policy driver for this change is to ensure a GDF beneath the seabed is licensable, the legislative changes cover other nuclear sites located wholly or partly in or under the territorial sea adjacent to the UK.

104 In due course, using an existing delegated power in the Nuclear Installations Act 1965, a statutory instrument will be brought forward to make a GDF (whether located beneath the seabed or otherwise) a prescribed installation that requires a licence, and as such, subject to ONR regulation.

Decommissioning of Nuclear Sites

105 These measures follow the Government's 2018 consultation[32] on adopting the Organisation for Economic Co-operation and Development (OECD) Nuclear Energy Agency's "Decommissioning Exclusion"[33] recommendation (2014), to allow qualifying nuclear sites to exit the requirement for nuclear third-party liability and on amending the processes for ending or varying nuclear licences.

106 Firstly, under the current regulatory arrangements, nuclear third-party liability continues for longer in the UK than required by international agreements. This measure will align the UK with those agreements.

107 Secondly, in the final stages of decommissioning and clean-up of nuclear sites, hazards and risks fall to levels comparable to those on non-nuclear industrial sites. This measure will allow ONR to end the nuclear licence once satisfied that nuclear safety matters have been resolved and to pass responsibility for regulation of work activities during the remaining demolition work to the Health and Safety Executive (HSE).

108 Former nuclear sites will also remain under regulation by the relevant environment agency for years or decades after the end of the nuclear licence. The environmental legislation is more suitable for land remediation than the existing nuclear regulation. In particular, the environmental legislation allows for lightly radioactively contaminated concrete substructures and pipes to remain buried on site, where it is safe to do so and subject to environmental permits. It is anticipated that there will be applications for on-site disposal, which will reduce the negative impacts of excavation of the material (generation of radioactive dust, risk to workers) and the impacts of transporting waste to disposal facilities elsewhere.

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[32] https://www.gov.uk/government/consultations/the-regulation-of-nuclear-sites-in-the-final-stages-of-decommissioning-and-clean-up

[33] OECD Nuclear Energy Agency "Decision And Recommendation Of The Steering Committee Concerning The Application Of The Paris Convention To Nuclear Installations In The Process Of Being Decommissioned", 2014 https://www.oecd-nea.org/jcms/pl_20232/decision-and-recommendation-of-the-steering-committee-concerning-the-application-of-the-paris-convention-to-nuclear-installations-in-the-process-of-being-decommissioned-2014

Excluded Disposal Sites

109 The UK is a signatory to the Paris and Brussels Conventions on Nuclear Third-Party Liability. These Conventions were amended by Protocols in 2004. One of the amendments was to extend the requirement for nuclear third-party liability to disposal facilities for radioactive waste of nuclear origin. In 2016, the UK passed the Nuclear Installations (Liability for Damage) Order to implement these proposals. This Order came into effect on 1 January 2022.

110 The Act will implement the OECD Nuclear Energy Agency's 2016 "*Low Level Waste Exclusion*"[34] This will allow qualifying low level waste disposal facilities to exit the requirement for nuclear third-party liability in view of the low levels of risk they present. This will reduce costs for operators of these disposal facilities and ensure disposal capacity as the nuclear decommissioning programme accelerates.

Convention on Supplementary Compensation for Nuclear Damage

111 Nuclear Third-Party Liability (NTPL) treaties are international agreements that ensure that in the unlikely event of a nuclear incident there is a minimum amount of compensation available to victims and that claims are channeled to the operator of the nuclear installation (and not the supply chain). Operators are required to have sufficient coverage to meet their liability cap to ensure that compensation would be available to victims. These agreements ensure that claims are heard in the country in which the incident occurs, which gives clarity to victims regarding the appropriate jurisdiction for bringing claims. Further, the agreements provide for strict liability, so that claimants need only prove harm and not fault. This brings benefits to potential victims, while encouraging investment by limiting the potential liability of operators who can cover their liability through private insurance and protecting the supply chain from claims. Additionally, some regimes create an international pooling mechanism amongst contracting parties to provide additional funds to victims if the operator liability cap is reached. The UK is currently party to the 1960 Paris Convention and 1963 Brussels Supplementary Convention (together Paris-Brussels) and has ratified the 2004 Protocols that came into force on 1 January 2022. NTPL treaties are implemented domestically through the Nuclear Installations Act 1965. The UK is intending to enhance its NTPL regime by seeking accession to the Convention on Supplementary Compensation for Nuclear Damage (CSC).

112 The legislation will introduce amendments to the Nuclear Installations Act 1965 in order to implement the requirements of the CSC to enable the UK's accession. Accession to the CSC will establish treaty relations with the 11 members of the CSC, and any other countries who may join the CSC in the future. Nuclear power has an important role to play in domestic energy security and in reducing greenhouse gas emissions to net zero in 2050, and an effective NTPL regime is a key enabler for driving new nuclear projects. Accession would be likely to give private sector developers increased confidence in investing in new nuclear projects; offer participants in the UK's

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[34] OECD Nuclear Energy Agency "Decision and Recommendation Concerning the Application of the Paris Convention on Third Party Liability in the Field of Nuclear Energy to Nuclear Installations for the Disposal of Certain Types of Low-level Radioactive Waste" 2016 https://www.oecd-nea.org/jcms/pl_19768/decision-and-recommendation-concerning-the-application-of-the-paris-convention-on-third-party-liability-in-the-field-of-nuclear-energy-to-nuclear-installations-for-the-disposal-of-certain-types-of-low-level-radioactive-waste?details=true

nuclear supply chain protection from claims; and reduce the risk of increased costs and timings associated with essential projects such as decommissioning. Additionally, these benefits are also equally applicable to potential UK exports, both presently and into the future.

113 The UK is potentially the first Paris Convention member to seek accession to the CSC. The legislation includes a section that gives the Secretary of State the power to make changes to the implementing legislation if required in the future. This is intended to future proof the legislation and ensure that the CSC works as part of the UK's NTPL regime.

114 As with the 1963 Brussels Supplementary Convention, the CSC establishes a pool of funds which countries can draw from to provide compensation for victims. The size of the fund is dependent on the United Nations contributions and installed nuclear capacity of the contracting parties at the time of an incident. The exact size of the fund will change over time as reactors come offline and online, exchange rates fluctuate, and United Nations contribution rates of contracting parties change. At present, with the UK as a contracting party the fund would be around £116 million, with the UK's contribution £7.5 million. This would only be called upon in the event of an incident occurring in a CSC member country after exceeding the operator liability limit. To date no party has drawn on any international funds.

Civil Nuclear Constabulary

115 The Civil Nuclear Constabulary (CNC) is the specialist armed police force that protects civil nuclear sites in England, Wales and Scotland, and civil nuclear material in transit in Great Britain and internationally. The CNC's remit is defined in Chapter 3 of the Energy Act 2004 (c.3). That Act establishes the Civil Nuclear Police Authority (CNPA) to govern the CNC, the Constabulary's function, jurisdiction and powers, and mandates inspection by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services.

116 The Act amends the functions and powers of the CNC and CNPA to enable the CNC to utilise their expertise in deterrence and armed response to support the security of other critical infrastructure sites or provide other policing services in the interests of national security. It also streamlines the CNC's arrangements to provide assistance to other police forces and enables the CNC to apprehend individuals across jurisdictions in Great Britain. In addition, it amends the timetable for the publication of the CNPA's three-year strategy plan.

Relevant Nuclear Pension Schemes

117 Government policy, led by HM Treasury, is to reform public sector pension schemes by implementing the recommendations from Lord Hutton's review conducted in 2011. This resulted in the Public Service Pensions Act 2013, which reformed the majority of pension schemes within the public service. Government policy is for final salary pension schemes in the public sector to be reformed to a Career Average Revalued Earnings (CARE) based scheme, in line with the Public Service Pensions Act 2013 and over four million public sector workers have already moved to new pension arrangements.

118 There are two final salary public sector schemes (with a total of approximately 8000 scheme members) within the Nuclear Decommissioning Authority's (NDA) group that are therefore within scope for reform, with estimated savings currently expected to total in the region of £200 million subject to the date of implementation.

119 Recognising the vital work that the NDA and its workforce delivers, the Department for Energy Security and Net Zero and the NDA worked with national trade unions in 2017 to develop an agreed pension benefit structure that was tailored to the characteristics of the affected NDA employees. This resulted in a proposed bespoke CARE benefit structure which is in line with the

key principles of reforms already implemented in respect of other public sector pension schemes. The bespoke CARE scheme design was formally accepted by the national trade unions following statutory consultation with affected NDA employees and a ballot of union members.

120 A public consultation was undertaken and published in December 2018, inviting views from stakeholders about how government proposes to enable the Nuclear Decommissioning Authority to implement pension reform of the two pension schemes in scope: the Combined Nuclear Pension Plan (CNPP) and the SLC section of the Magnox Electric Group of the Electricity Supply Pension Scheme.

121 Following the public consultation, the policy outlined in paragraph above was adopted. The measures featured in the Act will enable NDA to amend pension schemes for their employees in the nuclear sector in alignment with wider changes to public sector pensions.

Great British Nuclear

122 The Government is committed to ensuring that the UK is one of the best places in the world to invest in civil nuclear power and is taking steps to revitalise the UK's nuclear industry. The 2022 British Energy Security Strategy set out our ambition to deploy up to 24 Gigawatts of civil nuclear generation by 2050, around 25% of our projected 2050 electricity demand.[35]

123 Great British Nuclear (GBN) was launched as part of our Powering Up Britain plan to be an arms-length body responsible for helping deliver new nuclear projects[36]. GBN will act as an expert-led delivery body with the requisite skills and knowledge to deliver on the policy set by HM Government. This approach will not only give the supply chain the long-term certainty it needs to invest in homegrown capability and skills, in time it will offset plant retirements and strengthen UK energy independence.

124 The Energy Act provides statutory backing to support GBN's long-term operational mandate to carry its objectives with confidence. The Act makes provisions to enable GBN to have an evolving and enduring role within the civil nuclear sector given the changing market and HMG's evolving policy ambitions. To better support this adaptability, the Act includes powers and duties in relation to GBN.

Legal background

125 The UK's energy system is governed by a wide range of different pieces of legislation, a number of these are amended by this Act. This legislation, and a brief description of the main changes relevant to each, is provided below to assist the reader in placing some of the details described in these Explanatory Notes in context.

126 The Nuclear Installations Act 1965 is amended for a number of purposes relating to: nuclear decommissioning, low level nuclear waste regulation, the scope of the 1965 Act in relation to fusion energy facilities, the territorial extent of the 1965 Act for the purposes of geological disposal in the

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[35] https://www.gov.uk/government/publications/british-energy-security-strategy/british-energy-security-strategy

[36] https://www.gov.uk/government/publications/powering-up-britain

territorial sea and for the purposes of acceding to the Convention on Supplementary Compensation for Nuclear Damage.

127 The Enterprise Act 2002 is amended primarily for the purpose of allowing the Competition and Markets Authority to take action in relation to mergers between two or more energy network enterprises. That Act and the Competition Act 1998 are also modified for those and other purposes.

128 The Energy Act 2004 is amended for the purpose of making changes to the powers and remit of the Civil Nuclear Constabulary and to provide a power to include as renewable transport fuel, additional fuel types derived from nuclear power and from waste. The Energy Act 2004 is also modified to extend the special administration regime for energy licensees to CO_2 transport and storage licensees.

129 The Energy Act 2008 (the 2008 Act) is amended to provide for the continuing supervision of the roll-out of smart meters and the Smart Meters Act 2018 is amended as a consequence of these amendments. The 2008 Act is also amended so that the modifications it makes to the Petroleum Act 1998 accurately reflect the current policy related to the abandonment of carbon dioxide storage installations and to provide for cooperation between relevant licensing authorities.

130 The Gas Act 1986 is modified to ensure that the powers contained in that Act work for the purpose of conducting the hydrogen grid conversion trial. This Act is also amended in particular, to include new licensing functions for the Independent System Operator (ISOP) in respect of their planning and forecasting function and a licensing function for the new code manager who will have responsibility for the governance of a designated gas licence document. This Act is also amended to enable the ISOP's gas system planner licence to include conditions for or in connection with the purpose of facilitating or ensuring the effective performance (whether in relation to Northern Ireland or any other part of the United Kingdom) of hydrogen production allocation body functions, at times when the hydrogen production allocation body holds a gas system planner licence. This Act is also amended to include a reference to the net zero and carbon budgets targets in the Climate Change Act 2008 in the principal objectives and duties of the Secretary of State and the GEMA; therefore, requiring the regulator to consider how its decisions may assist the Secretary of State in meeting the government's net zero and carbon budget targets.

131 The Rights of Entry (Gas and Electricity Boards) Act 1954 is modified so that the relevant provisions apply as though a reference to a gas operator includes a person conducting a hydrogen grid conversion trial.

132 The Electricity Act 1989 is amended for a number of reasons but in particular to provide new activities that are licensable under the terms of that Act. These include: the activity coordinating and directing the flow of electricity for the purposes of transmitting electricity (relevant to the ISOP), industry code governance, the activity of operating a multi-purpose interconnector and a power to make regulations regarding performing load control functions. A new definition is also added to this Act which relates to storing electricity. This Act is also amended to include a reference to the net zero and carbon budgets targets in the Climate Change Act 2008 in the principal objectives and duties of the Secretary of State and the GEMA; therefore, requiring the regulator to consider how its decisions may assist the Secretary of State in meeting the government's net zero and carbon budget targets.

133 The Petroleum Act 1998 is amended to add a section related to the Oil and Gas Authority's power over changes of control of petroleum licensees and to provide for a new charging scheme related to work carried out by the Secretary of State to abandonment programs for offshore installations. This Act is also applied in other parts of the Act (see Energy Act 2008 above) related to the abandonment of carbon dioxide storage installations.

134 A number of minor consequential amendments are also made in other primary legislation including the Utilities Act 2000, the Energy Act 2013, the Enterprise and Regulatory Reform Act 2013, the Energy Act 2016 and the Heat Networks (Scotland) Act 2021.

135 The Climate Change Act 2008 is amended to broaden the scope of removals of greenhouse gases so that it includes a number of different removal methods and not just removals through land use.

Territorial extent and application

136 Section 333 sets out the territorial extent of the Act, that is the jurisdictions to which various provisions of the Act are subject. The extent of an Act can be different from its application. Application is about where an Act produces a practical effect. Most of the provisions in the Act extend and apply to England, Scotland and Wales with some provisions also extending to Northern Ireland. Some provisions in the Act extend and apply to England and Wales or apply to England only. The commentary on individual provisions (or groups of provisions) of the Act includes a paragraph explaining their extent and application.

137 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Act

Part 1: Licensing of Carbon Dioxide Transport and Storage

Chapter 1: Licensing of Activities

Section 1: Principal objectives and general duties of the Secretary of State and the economic regulator

138 This section establishes the Gas and Electricity Markets Authority as the economic regulator of carbon dioxide (CO_2) transport and storage, and establishes that the principal objectives and general duties for the Secretary of State and economic regulator in its decision making and exercise of their respective functions under this Part of the Act are to:

a. protect the interests of current and future users of CO_2 transport and storage networks,

b. protect the interests of consumers where relevant, and

c. promote the efficient and economic development and operation of transport and storage networks, having regard to the need for licence holders to be able to finance their licensable activities.

139 Users of the network are defined as those seeking to have their carbon dioxide conveyed to storage.

140 The principal objectives reflect the balance of considerations for an emergent CO_2 transport and storage sector, where the needs of both current and future users of the networks, and by extension consumers who may fund carbon capture activities for certain users, need to be balanced with the need for efficient and economic networks that are able to attract the investment that will be needed to drive innovation and growth.

141 In carrying out their functions under this Part of the Act, the Secretary of State and economic regulator must carry out their functions in a manner best calculated to:

a. promote effective competition,

b. promote the resilience of transport and storage networks, and

c. protect the public from dangers arising from the construction, operation and decommissioning of transport and storage infrastructure.

142 The economic regulator and Secretary of State shall also have regard to the need to contribute to the achievement of sustainable development, including statutory decarbonisation targets.

Section 2: Prohibition on unlicensed activities

143 This section prohibits a person from carrying on certain activities without a licence.

144 The activities comprise the transportation of CO_2 by onshore and offshore pipeline and operating a site for the geological storage of CO_2. The scope of the licensable activities is initially concerned with pipeline transportation of CO_2 and the operation of an associated geological storage facility as these assets have monopolistic characteristics.

145 This section also enables the Secretary of State to specify in regulations other, non-pipeline, means of transportation of CO_2 (e.g., shipping, road, rail) to which the licensing regime should apply, should it be considered appropriate in future to extend the scope of the regime. This might be required if competitive forces do not regulate prices in those sectors as anticipated.

146 In addition to the licence requirements established in Part 1 of the Act, the licensing requirements for CO_2 storage activities under the existing provisions of Chapter 3 of Part 1 of the Energy Act 2008 continue to apply.

Section 3: Consultation on proposals for additional activities to become licensable

147 This provision provides for prior consultation on any proposals to extend by regulations the application of the licensing regime to other (non-pipeline) forms of transportation of CO_2.

Section 4: Territorial scope of prohibition

148 The prohibition on operating a CO_2 transport and storage network extends across the UK onshore and offshore, including the territorial sea and waters in a Gas Importation and Storage Zone.

Section 5: Exemption from prohibition

149 Section 5 enables regulations to be made providing for exemptions to be granted from the prohibition on carrying out licensable activities without a licence. 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, following a process of consultation.

Section 6: Revocation or withdrawal of exemption

150 The Secretary of State may attach conditions to any exemption, and may revoke or withdraw an exemption if, for example, such a condition is breached, or if an exemption is no longer considered appropriate.

Section 7: Power to grant licences

151 Section 7 provides for the granting of licences to permit the carrying out of carbon dioxide transport and storage activities. In the enduring regulatory regime, licences will be granted by the economic regulator. In the initial period, as set out in section 16 and Schedule 1, the power to grant licences will rest with the Secretary of State.

Section 8: Power to create licence types

152 In the future, the market may evolve such that it may become appropriate for separate licences to be granted to cover distinct elements of a transport and storage network, to allow operators to specialise in the provision and operation of certain elements of the transport and storage infrastructure, for example to cover the onshore and offshore elements separately, and which may necessitate different licence conditions. Section 8 enables the Secretary of State, by regulations, to provide for the creation of different types of licence for the licensable activities specified in section 2(2).

Section 9: Procedure for licence applications

153 This provision provides that the process for licence applications may be specified in regulations. Such regulations may specify the details of how the application should be made and any associated fees payable.

Section 10: Competitive tenders for licences

154 Section 10 enables regulations to be made to establish a procedure for granting future licences on a competitive basis.

Section 11: Conditions of licences: general

155 Section 11 establishes the conditions that may be included in a licence. Such conditions must be limited to those which the grantor (the Secretary of State or the economic regulator) considers necessary having regard to their statutory duties and objectives.

156 In order that the economic regulator may cover its costs of administering the licence, this section confirms that the licence may contain conditions requiring a payment to be made to the economic regulator during the term of the licence.

157 Conditions may also include the ability to require that the licence holder: complies with directions relating to specified matters; consents to the disclosure of information; be prohibited from doing certain actions unless the consent of the Secretary of State or economic regulator has been provided; refer certain matters for a determination by the economic regulator or the Secretary of State; and refer certain things e.g. contracts or agreements which are related to the licence, for approval from the economic regulator or the Secretary of State.

158 In particular subsection (3) confirms that the licence may contain provision about the calculation of the 'allowed revenue' that the licence holder is entitled to receive.

159 Subsections (5) and (6) enable the licence to require the provision of certain information to inform persons who are considering applying for a licence and also potential users of the network who are considering whether to apply for financial support for carbon capture activities, where carbon capture could be from a range of potential sources, including power plants, industrial facilities, low carbon hydrogen, carbon capture from energy from waste, carbon capture from bioenergy and potentially direct air capture.

160 Any monies received by the economic regulator pursuant to the conditions must be paid into the Consolidated Fund.

Section 12: Standard conditions of licences

161 A number of conditions will be appropriate to include as standard in all licences of the relevant type (subject to certain exceptions). For example, it is likely to be appropriate to require all CO_2 transport and storage companies to avoid any undue preference or undue discrimination in the terms on which they undertake the conveyance of CO_2, in order to ensure there is an open market which drives down costs by reducing anticompetitive behaviour.

162 The standard conditions of the licence are automatically incorporated by reference when the licence is granted. If different types of licence are developed pursuant to section 8 there may be different standard conditions for each of those types.

Section 13: Modification of conditions of licences

163 Section 13 provides for the economic regulator to be able to modify the conditions of a licence. If the economic regulator intends to make a modification, this provision sets out how that modification should be made. The Secretary of State has the power, within the consultation period, to direct that a modification should not be made, and the economic regulator must comply with any such direction.

164 The economic regulator is obliged to publish the decision and modifications in such a manner as it considers appropriate to bring it to the attention of those likely to be affected by the modification, stating the effect of the modifications, how it has taken account of any representations and the reasons for any proposed differences between the original and modified proposal.

Section 14: Modifications of conditions under section 13: supplementary

165 Section 14 requires that where the economic regulator has made modifications to the standard condition of a licence of a particular type, it must also make similar changes to the standard conditions of any other licence of that type.

Section 15: Modification by order under other enactments

166 Section 15 provides for the Secretary of State and the CMA to modify licence conditions in circumstances where it is necessary to account for mergers between enterprises which are licence holders and ensure effective competition in the market.

Section 16: Interim power of Secretary of State to grant licences

167 The Secretary of State will grant initial licences and determine the initial terms and conditions of the first licences. These licences will be regulated by the economic regulator. For the enduring regulatory regime, the power to grant licences will be transferred to the economic regulator. Together with Schedule 1, section 16 provides for the Secretary of State to set in regulations the date on which responsibility for the granting of licences transfers from the Secretary of State to the economic regulator.

Section 17: Termination of licence

168 The terms of the licence will provide for the economic regulator to be able to revoke a licence in certain predefined circumstances and after providing a certain number of days' notice. The economic regulator will be required to notify persons who may be affected by the licence termination, which includes the relevant licensing authorities for CO_2 storage licences under the provisions of the Energy Act 2008.

Section 18: Transfer of licences

169 Section 18 provides for a licence to be transferred to another person, or the inclusion of another person as a party to the licence, providing the consent of the economic regulator has been granted. That consent may be made subject to specified conditions. For example, a licensee may wish to transfer their licence as part of a proposed commercial merger transaction.

Section 19: Consenting to transfer

170 Section 19 describes the process that must be followed by the economic regulator before it gives consent to any transfer, requiring a notice of any proposal to grant consent to be given to specified persons and requiring the economic regulator to take into account any representations made by those persons in advance of making a decision. In particular, the Secretary of State has a right to direct the economic regulator not to consent to a transfer of licence as there may be Government support contracts in place between the Secretary of State and the transport and storage company pursuant to the licence.

Section 20: Appeal to the CMA

171 Section 20 establishes that a licence holder, or a transport and storage network user whose interests are materially affected by a decision by the economic regulator to modify a licence condition, has a right to appeal a licence modification decision to the Competition and Markets Authority (CMA). This is intended to ensure due process and that there are sufficient safeguards for investors whose rights may be interfered with by a proposed licence modification during the term of the licence.

172 The CMA's permission is required to bring an appeal, but the CMA may only refuse to allow an appeal on one of the grounds specified in subsection (4) These are: where the person bringing the appeal's interests are not materially affected by the decision or because the grounds for appeal are trivial or vexatious or have no reasonable prospects of success.

Section 21: Procedure on appeal to CMA

173 The process for appeals to be made and dealt with is set out in Schedule 2. Schedule 2 sets out the process by which an application to bring an appeal may be made; provides that the CMA may direct any decision not to have effect pending the determination of an appeal; specifies the time limit for representations and observations by the economic regulator to be made; establishes the way that a CMA group who is making this quasi- judicial determination should be constituted; and specifies the matters that may be considered on appeal. Further, to ensure a fair process and in order that the CMA may make a fully informed decision, the provisions establish a right for the CMA to require the production of documents and written statements, and for persons to attend to give oral evidence. It establishes an offence for failure to comply with a notice to provide information and allows the CMA to make a costs order relating to the appeal.

Section 22: Determination by CMA of appeal

174 This provision sets out the matters to which the CMA must have regard when determining an appeal and the circumstances in which the CMA may allow an appeal to be brought.

Section 23: CMA's powers on allowing appeal

175 Section 23 sets out the remedies available to the CMA where it has allowed an appeal. The CMA can quash the decision or require the economic regulator to reconsider the decision. If the appeal relates to a price control decision, the CMA can quash the decision, require the economic regulator to reconsider the decision or substitute its own decision.

Section 24: Time limits for CMA to determine an appeal

176 Section 24 sets out that the CMA has an obligation to determine any appeal against a decision within a period of four months of the date on which permission to bring the appeal was given, unless it is a price control decision, in which case they have a period of six months.

177 Where representations on timing are made and the CMA considers there are special reasons why the time limits above cannot be met, it may have an extra month for its decision. Thereby the CMA must determine an appeal in five months, or seven months in the case of a price control decision. In this case, the CMA must inform the parties of the time limit and publish it in a manner it considers appropriate to bring it to the attention of parties who may be affected by the determination.

Section 25: Determination of appeal by CMA: supplementary

178 Section 25 sets out that any determination by the CMA must be contained in an order setting out the reasons for the determination and stated to take effect on the time specified in the order. The order must be notified to the parties to the appeal and published as soon as reasonably practicable in such manner as the CMA considers appropriate to bring it to the attention of parties who may be affected by the determination (with the ability to redact commercially sensitive information or to protect personal data).

179 The economic regulator must take necessary steps to comply within the time specified in the order, or, where not specified, within a reasonable timeframe.

Section 26: Provision of information to or by the economic regulator

180 Section 26 allows the economic regulator to request and provide information from or to relevant persons or bodies listed in subsection (2) as it considers appropriate to facilitate the duties or functions of the economic regulator or the relevant person or body.

181 Subsection (2) lists relevant bodies including the North Sea Transition Authority (referred to in the legislation as 'the Oil and Gas Authority'), the Environment Agency, the Health and Safety Executive Scottish Ministers, the Scottish Environment Protection Agency, the Welsh Ministers, Natural Resources Wales, the Department for the Economy in Northern Ireland, the Northern Ireland Environment Agency, the Health and Safety Executive for Northern Ireland, the CMA and any other person the economic regulator considers appropriate who has powers conferred by or pursuant to primary legislation, which is intended to include the counterparty to any contracts providing consumer or taxpayer support for associated carbon capture activities. The economic regulator may also request from or provide information to any other persons or bodies not listed in subsection (2) as it considers appropriate.

182 Information requested by the economic regulator should be provided within the time period specified in the notice.

183 Disclosure of information in accordance with this power does not breach any obligation of confidence owed by the person making the disclosure nor does it breach any other restriction on disclosure however that restriction is imposed. However, this power does not authorise or require disclosure in breach of the data protection legislation.

Section 27: Power of Secretary of State to require information

184 Section 27 confers power to the Secretary of State to request information directly from a licence holder as required for the purposes of the Secretary of State's functions. This could include requests for information to inform a transfer scheme or to facilitate the formulation of policy. Such information should be requested by way of a notice, which explains the nature and form of the information required and the time within which a response is requested. However, such a request cannot be made to obtain information protected by legal professional privilege, or, in Scotland, confidentiality of communications.

185 Disclosure of information in accordance with this power does not breach any obligation of confidence owed by the person making the disclosure nor does it breach any other restriction on disclosure however that restriction is imposed. However, this power does not authorise or require disclosure in a breach of the data protection legislation.

Section 28: Monitoring, information gathering etc

186 Under this section, the economic regulator is obligated to keep the state of the market under review, in particular reviewing the activities of operating a site for the permanent storage of carbon dioxide and associated transportation of carbon dioxide as well as ancillary activities.

187 The economic regulator may collect information for the carrying out of market monitoring functions and is obliged to share relevant information with the Secretary of State or the CMA as requested.

Section 29: Power to require information for purposes of monitoring

188 In order to enable it to properly carry out its functions and fulfill its obligation under section 28 to keep the state of the market under review, the economic regulator may request relevant information by notice from any licence holder.

189 This provision establishes an offence where the licence holder does not comply with a request for relevant information or alters or destroys a document.

190 Disclosure of information in accordance with this provision does not breach any obligation of confidence owed by the person making the disclosure nor does it breach any other restriction on disclosure however that restriction is imposed. Nonetheless, this power does not authorise or require disclosure in breach of the data protection legislation.

Section 30: Duty to carry out impact assessment

191 Section 30 applies where the economic regulator is minded to pursue a proposal which could have a significant impact on licence holders or persons engaged in activities associated with the licensable activities or on the general public or the environment. Prior to implementing any such proposal, the economic regulator is required to carry out and publish an assessment of the likely impact of implementing the proposal or confirm that it considers it unnecessary to carry out such an assessment, with the reasons for this conclusion.

192 If the economic regulator publishes an impact assessment for a proposal, section 30 requires that it publishes the assessment in an appropriate manner to provide an opportunity for those who are likely to be significantly affected by the proposal's implementation to make representations. The economic regulator is required to explain how representations must be made alongside the assessment and allow an appropriate opportunity for representations to be made prior to implementation.

193 A list of the assessments carried out during the relevant financial year and a summary of the decisions taken during that year which relate to proposals which were assessed must be published in every annual report published pursuant to section 41.

Section 31: Reasons for decisions

194 To ensure transparency of decision making, under section 31 the economic regulator and the Secretary of State are required to give reasons for their decisions and determinations listed in subsection (1).

195 Upon making a decision the economic regulator or the Secretary of State must publish a notice stating the reasons for the decision for the benefit of those who are likely to be interested as well as sending a copy of the notice to the relevant licence holder. But before publishing a notice the economic regulator or the Secretary of State must have regard to the need to exclude information that could seriously and prejudicially affect the interests of an individual or body.

Section 32: Enforcement of obligations of licence holders

196 Together with Schedule 3, section 32 provides for the economic regulator to enforce the conditions of licences and other obligations upon licence holders. Schedule 3 sets out procedural requirements which the economic regulator must comply with in relation to enforcing and securing compliance with licence conditions, including in respect of the imposition of financial penalties.

Section 33: Making of false statements etc

197 Section 33 sets out that it is a statutory offence to make false statements knowingly or recklessly when providing any information under this Part.

Section 34: Liability of officers of entities

198 Section 34 establishes the circumstances in which action may be taken against company officers such as directors within a corporate entity in relation to an offence that has been committed under this part of the Act.

Section 35: Criminal proceedings

199 Section 35 sets out that an offence under Part 1, which could be committed onshore or in an offshore place may be taken to have been committed in any place in the United Kingdom and that offences committed in offshore places may only be instituted by the Secretary of State or by the Director of Public Prosecutions.

Chapter 2: Functions with respect to competition

Section 36: Functions under the Enterprise Act 2002

200 Section 36 provides for the economic regulator for carbon dioxide transport and storage to exercise certain functions under the Enterprise Act 2002 concurrently with the CMA. This covers those functions under Part 4 of the Enterprise Act 2002, other than certain powers which rest only with the CMA, i.e., s166 (duty on the CMA to compile a register), 171 (duty on CMA to publish information and guidance relating to the exercise of their functions) and 174E (power for CMA to publish a statement on penalties), insofar as those functions:

- are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013), and
- relate to commercial activities connected with the transportation and storage of carbon dioxide i.e., those activities which are ordinarily prohibited without a licence under Part 1 of the Act, and any ancillary activities.

201 This section sets out how relevant provisions within Part 4 Enterprise Act 2002 should be read to give effect to this. It also requires the economic regulator to provide certain information to a CMA group for the purpose of assisting a market investigation reference.

Section 37: Functions under the Competition Act 1998

202 Section 37 provides for the economic regulator of carbon dioxide transport and storage to exercise certain functions under Part 1 of the Competition Act 1998 concurrently with the CMA, to enable them to investigate and enforce matters relating to anti-competitive behaviours and abuse of dominant position insofar as they relate to carrying on of relevant transport and storage activities.

Section 38: Sections 36 and 37: supplementary

203 Section 38 provides for the economic regulator and CMA to consult each other prior to exercising those functions under the Enterprise Act 2002 and Competition Act 1998 which are held concurrently in respect of the economic regulation of CO_2 transport and storage activities. It provides that neither entity may exercise functions under those Acts if such functions have already been exercised in relation to that matter by the other. It provides for the Secretary of State to make a determination in the event of a question arising as to whether the economic regulator has concurrent powers in relation to a particular case.

Chapter 3: Reporting Requirements

Section 39: Forward work programmes

204 Section 39 establishes the process under which the economic regulator must set a forward work programme for the carrying out of its functions in respect of the regulation of carbon dioxide transport and storage. A forward work programme should include estimates of the expenditure expected to be incurred in connection with the programme. It is anticipated that Ofgem may choose to set out the transport and storage forward work programme covering their activities as economic regulator within a single document which also covers the forward work programme

they are required to publish in relation to their functions in the gas and electricity markets pursuant to section 4 of the Utilities Act 2000.

Section 40: Information in relation to CCUS strategy and policy statement

205 Section 40 requires the economic regulator to publish such information as may be required by any CCUS strategy and policy statement within a document or forward work programme. This section confirms the circumstances in which that duty does not apply and where the economic regulator may choose not to include certain information within a forward work programme for a particular financial year.

Section 41: Annual report on transport and storage licensing functions

206 Section 41 sets out the requirement for the economic regulator to provide an annual report covering the exercise of is functions, or any activities of the CMA in relation to references made to it by the economic regulator, during the year in relation to transport and storage, and the process for laying such a report to facilitate appropriate Parliamentary scrutiny.

Chapter 4: Special Administration Regime

207 This Chapter provides for the application of a Special Administration Regime (SAR), in the event of a CO_2 transport and storage company insolvency.

208 This will provide the Secretary of State or, with the Secretary of State's permission, the economic regulator, with a power to apply to the courts for the appointment of a special administrator.

209 The detailed rules governing the establishment of a SAR will be set in secondary legislation.

Section 42: Transport and storage administration orders

210 Section 42 sets out the meaning of some of the key terms in this Part and the scope of a transport and storage administration order. It requires that the relevant administrator must perform its functions as administrator so as to achieve the objectives set out in section 43.

Section 43: Objective of a transport and storage administration

211 Section 43 provides the objective for an administration order made under this Part and the means by which the administrator has to achieve those objectives.

212 The objective of the administrator for the purposes of the SAR is to commence or continue the activities authorised by the relevant licence of the company with the objective of ensuring the licenced activities can be continued in a manner which is efficient and economic, and which ensures the safety and security of the transport and storage network, and that it becomes unnecessary for the order to remain in force. The Government expects that the administrator will take into account any decommissioning requirements when considering what is required to ensure a safe and secure transport and storage network.

213 The means by which the administrator can achieve the objective is by rescuing the company as a going concern or transferring its assets, rights and obligations to one or more companies.

Section 44: Application of certain provisions of the Energy Act 2004

214 Section 44 applies sections 156 to 167, 171 and 196 of, and Schedules 20 and 21 to, the Energy Act 2004 with appropriate modifications. Those provisions of the Energy Act 2004 will apply as follows:

215 Section 156, which provides that an application to the court for a SAR to be made by the Secretary of State or by the Authority (in this case the economic regulator), with the consent of the Secretary of State.

216 Section 157, which empowers the court to make an order for a SAR in response to an application in the following circumstances:

- The relevant licensee is unable to pay its debts,
- The relevant licensee is likely to be unable to pay its debts, or
- On petition from the Secretary of State under section 124A of the Insolvency Act 1986, the court is satisfied that it would be just and equitable (disregarding the objective in section 31(1)) to wind up the licensee company in the public interest.

217 Section 158 provides that the administrator acts as the agent of the relevant licensee. It further provides that the administrator must exercise management functions for the purpose of achieving the objective of the administration order as quickly and efficiently as is reasonably practicable. Moreover, the exercise of powers and performance of duties must be carried out in a manner which, in so far as it is consistent with the objective of the administration, best protects the interests of the creditors of the company as a whole and, subject to those interests, the interests of the members of the company as a whole.

218 Section 159, which applies the rule making power in section 411 of the Insolvency Act 1986 (c.45). Schedule 20, itself provides for certain provisions, with modifications, of Schedule B1 to the Insolvency Act 1986 (covering detailed rules relating to administration) to have effect.

219 Sections 160 to 164, which are intended to prevent the SAR being frustrated by the granting of prior orders before the Secretary of State or the Authority have been given an opportunity to apply for an administration order.

220 Section 165, which enables the Secretary of State, with the consent of the Treasury, to give a grant or loan to a company in administration to achieve the objective of administration. It also enables the Secretary of State to set the terms of a grant or loan including the requirement that all or part of a grant should be repaid.

221 Section 166 which enables the Secretary of State, with the consent of the Treasury, to indemnify persons in respect of liabilities incurred or loss or damage sustained in connection with the exercise of the administrator’s powers and duties and requires the Secretary of State to lay a statement of any such agreement to indemnify persons before Parliament as soon as practicable.

222 Section 167 which enables the Secretary of State, with the consent of the Treasury, to provide guarantees in relation to a relevant licensee in administration and requires the Secretary of State to lay a statement of any guarantees given before Parliament as soon as practicable.

223 Section 171 which provides interpretations of various specific terms and section 196 which provides interpretations of various general terms.

224 Schedule 20 provides for certain provisions, with modifications, of Schedule B1 to the Insolvency Act 1986 (covering detailed rules relating to administration) to have effect in relation to an administration. This includes the court ending an administration order on the application of the Secretary of State (or the economic regulator or the administrator, with the Secretary of State’s permission). This may happen in circumstances where the objective of the order has been achieved, or where the objective has not been achieved and a Transfer Scheme may need to follow.

225 Schedule 21, which provides for the transfers to another company or companies as a going concern of the whole or part of a relevant licensee transportation or permanent storage company's assets to ensure that the objective of the administration is met. Such transfer schemes are to be made by the administrator with the approval of the Secretary of State, and at a time appointed by the court.

Section 45: Conduct of administration, transfer schemes, etc

226 Section 45 modifies section 159(3) of the Energy Act 2004. This works alongside the application of section 159 of the Energy Act 2004 by section 44(1) of the Energy Act 2023 to give the Secretary of State the power to make insolvency rules under section 411 of the Insolvency Act 1986 for the purposes of this Chapter.

Section 46: Modification of conditions of licences

227 Section 46 provides a power to the Secretary of State to make modifications to the conditions and terms of the relevant licence for the purpose of furthering the objective of the administration and may only be exercised when an administration order is in force.

228 This is intended to allow for the Secretary of State to recover financial support that may have been provided to secure the objectives of the SAR.

Section 47: Modification under the Enterprise Act 2002

229 Section 47 extends the powers for the Secretary of State to modify or apply certain enactments, which are conferred by sections 248 and 277 of the Enterprise Act 2002 for the purposes of enabling future modifications to this Chapter, in order to ensure that the provisions do not get out of line with wider insolvency legislation.

Section 48: Power to make further modifications of insolvency legislation

230 Section 48 provides the Secretary of State with the power to apply certain specified insolvency legislation, including with any necessary modifications, to enable the Secretary of State to amend the detail of the regime if experience of its application highlights any difficulties or areas of concern as well as to respond to changes in insolvency law, especially in relation to administration.

Section 49: Interpretation of Chapter 4

231 Section 49 defines the relevant terms for this Chapter.

Chapter 5: Transfer Schemes

Section 50: Transfer schemes

232 Section 50 provides for the Secretary of State to make a statutory transfer scheme under which certain property, rights or liabilities of a licence holder can be transferred either to an appropriate body or to the Secretary of State. The statutory transfer scheme can be affected where a termination event has arisen in relation to the licence and is intended to enable the Secretary of State to transfer all or part of the assets to an alternative entity to secure either the ongoing operation of the network, or that part of the network, in an efficient, economic, safe and secure manner, or, the safety and security of the network in such circumstances where the ongoing operation is no longer viable.

233 It requires the Secretary of State to consider whether any proposed transferee would be able to meet the conditions and requirements of any licence or permit that would be transferred to the person under the proposed scheme. This is intended in particular to ensure that there is proper consideration of the appropriate conditions and requirements associated with any relevant storage licence or permit.

234 It confirms that the transfer scheme should only take effect with the consent of the transferor and transferee.

Section 51: Consent and consultation in relation to transfers

235 Section 51 provides for the Secretary of State to consult certain specified persons and persons whom the Secretary of State considers appropriate before effecting a statutory transfer scheme.

Section 52: Conduct of transfer schemes

236 Section 52 applies Schedule 4, which describes the scope of what may be transferred and the process by which a transfer scheme may take place. In particular, a transfer scheme may provide for the transfer of any associated licences or permits e.g. any associated storage licence, and that powers and duties which are exercised or required to be performed in connection with the undertaking or property, rights or liabilities to be transferred may also be transferred. It is anticipated that this could be relied on, for example: to require the transferee to provide any necessary security as required in relation to any associated storage licence. The provisions set out the circumstances in which a transfer scheme may subsequently be modified.

Chapter 6: Miscellaneous and General

Section 53: Cooperation of storage licensing authority with economic regulator

237 Section 53 inserts new sections 34A and 34B into the Energy Act 2008 to provide for cooperation and information-sharing between the economic regulator and the relevant CO_2 storage licensing authority, which may be the Oil and Gas Authority or the relevant minister in the Scottish and Welsh administrations and the Department of the Economy in Northern Ireland. This is intended to support the exercise of the functions of the economic regulator, including by ensuring that relevant CO_2 storage licensing authority informs the economic regulator if it becomes aware of circumstances that have arisen or are likely to arise that may affect the activities carried out under the licence.

Section 54: Amendments related to Part 1

238 Consequential amendments to existing legislation arising from the measures in this Part are set out in Schedule 5.

Section 55: Interpretation of Part 1

239 Section 55 sets out definitions of terms for the purpose of interpreting the provisions of this Part.

Part 2: Carbon dioxide capture, storage etc and hydrogen production, transport and storage

Chapter 1: Revenue Support Contracts

Section 56: Chapter 1: interpretation

240 Section 56 provides the meanings and definitions of various terms used in Chapter 1.

Section 57: Revenue support contracts

241 Section 57 out the Secretary of State's power to make regulations about revenue support contracts. These are referred to as revenue support regulations.

Section 58: Duties of a revenue support counterparty

242 Section 58 makes it clear that it is the duty of a person who has been designated as a revenue support counterparty to comply with the regulations and any direction given by virtue of this Chapter. This will include the requirement for a revenue support counterparty to offer to contract with an eligible person when the Secretary of State has directed it to, or an allocation body has given a notification under section 75.

243 Subsection (2) enables revenue support regulations to make provision to require a revenue support counterparty to enter into arrangements or to offer to contract for purposes connected to a revenue support contract, or to specify things that a revenue support counterparty must, can or cannot do. It also enables revenue support regulations to make provision about the making of directions from the Secretary of State to a revenue support counterparty. This will enable specific directions to be given in relation to particular contracts or matters.

244 Subsection (4) places a duty on a revenue support counterparty to exercise its functions to ensure that it can meet its liabilities under a revenue support contract.

245 Subsection (5) requires revenue support regulations to include such provision as the Secretary of State considers necessary to ensure that a revenue support counterparty can meet its liabilities under a revenue support contract.

Section 59: Designation of carbon dioxide transport and storage counterparty

246 This section makes provision for the Secretary of State to designate a person by notice, with the consent of that person, to be the counterparty for carbon dioxide transport and storage revenue support contracts. A carbon dioxide transport and storage revenue support contract is a contract to be entered into between the counterparty and a holder of a licence under section 7.

247 Subsection (5) provides that more than one carbon dioxide transport and storage counterparty may be designated at one time.

248 Subsection (6) deals with the continuity of counterparties. If the designation of a carbon dioxide transport and storage counterparty were to lapse, the Secretary of State must, as soon as reasonably practicable, make a transfer scheme under section 86, transferring all contracts to that new carbon dioxide transport and storage counterparty. This is designed to ensure that where a carbon dioxide transport and storage counterparty ceases to be designated the contracts are transferred to a new carbon dioxide transport and storage counterparty.

Section 60: Direction to offer to contract with licence holder

249 Section 60 confers a power on the Secretary of State to issue a direction to a carbon dioxide transport and storage counterparty to offer a contract to an eligible person, that is a person who holds or who will hold a licence granted under section 7, in accordance with provisions set out in regulations.

Section 61: Designation of hydrogen transport counterparty

250 This section makes provision for the Secretary of State to designate a person by notice, with the consent of that person, to be a counterparty to hydrogen transport revenue support contracts. A hydrogen transport counterparty will enter into and manage contracts with eligible hydrogen transport providers.

251 Subsection (5) provides that more than one hydrogen transport counterparty may be designated at one time.

252 Subsection (6) deals with continuity of hydrogen transport counterparties. If the designation of a hydrogen transport counterparty were to lapse, the Secretary of State must, as soon as reasonably practicable, make a transfer scheme under section 86, transferring contracts to a new hydrogen transport counterparty. This is designed to ensure that where a hydrogen transport counterparty ceases to be designated, the contracts are transferred to a new hydrogen transport counterparty.

253 Subsection (7) defines “hydrogen transport provider”. Subsection (8) and subsection (9) provide further clarification on this definition, including territorial scope and transporting of compounds.

Section 62: Direction to offer to contract with eligible hydrogen transport provider

254 Section 62 confers a power on the Secretary of State to issue a direction to a hydrogen transport counterparty to offer to contract with eligible hydrogen transport providers in accordance with provisions set out in regulations. Subsection (4) requires that revenue support regulations determine what persons are eligible.

255 The section also makes clear that revenue support regulations determining the meaning of “eligible” in relation to a hydrogen transport provider may make provision by reference to standards or other published documents external to the regulations, as the documents have effect from time to time.

Section 63: Designation of hydrogen storage counterparty

256 Section 63 makes provision for the Secretary of State to designate a person by notice, with the consent of that person, to be a counterparty to hydrogen storage revenue support contracts. A hydrogen storage counterparty will enter into and manage contracts with eligible hydrogen storage providers.

257 Subsection (5) provides that more than one hydrogen storage counterparty may be designated at one time.

258 Subsection (6) deals with continuity of hydrogen storage counterparties. If the designation of a hydrogen storage counterparty were to lapse, the Secretary of State must, as soon as reasonably practicable, make a transfer scheme under section 86, transferring contracts to a new hydrogen storage counterparty. This is designed to ensure that where a hydrogen storage counterparty ceases to be designated, the contracts are transferred to a new hydrogen storage counterparty.

259 Subsection (7) defines “hydrogen storage provider”. Subsection (8) and subsection (9) provide further clarification on this definition, including territorial scope and transporting of compounds.

Section 64: Direction to offer to contract with eligible hydrogen storage provider

260 Section 64 confers a power on the Secretary of State to issue a direction to a hydrogen storage counterparty to offer to contract with eligible hydrogen storage providers in accordance with provisions set out in regulations. Subsection (4) requires that revenue support regulations determine what persons are eligible.

261 The section also makes clear that revenue support regulations determining the meaning of “eligible” in relation to a hydrogen storage provider may make provision by reference to standards or other published documents external to the regulations, as the documents have effect from time to time.

Section 65: Designation of hydrogen production counterparty

262 Section 65 makes provision for the Secretary of State to designate a person by notice, with the consent of that person, to be a counterparty to hydrogen production revenue support contracts. A hydrogen production counterparty will enter into and manage contracts with eligible low carbon hydrogen producers.

263 Subsection (5) provides that more than one hydrogen production counterparty may be designated at one time.

264 Subsection (6) deals with the continuity of hydrogen production counterparties. If the designation of a hydrogen production counterparty were to lapse, the Secretary of State must, as soon as reasonably practicable, make a transfer scheme under section 86, transferring contracts to a new hydrogen production counterparty. This is designed to ensure that where a hydrogen production counterparty ceases to be designated the contracts are transferred to a new hydrogen production counterparty.

265 Subsection (7) defines “low carbon hydrogen producer” and “greenhouse gas”.

266 Subsection (8) makes clear that for the purposes of the definition of “low carbon hydrogen producer”, carrying on hydrogen production activities in the United Kingdom includes such activities in, above or below the territorial sea adjacent to the United Kingdom and waters in a Renewable Energy Zone.

Section 66: Direction to offer to contract with eligible low carbon hydrogen producer

267 Section 66 confers a power on the Secretary of State to issue a direction to a hydrogen production counterparty to offer to contract with eligible low carbon hydrogen producers in accordance with provisions set out in regulations.

268 Subsection (4) requires that revenue support regulations determine what persons are eligible. Subsection (5) provides that such regulations may make provision by reference to standards or other published documents external to the regulations, as the documents have effect from time to time.

Section 67: Designation of carbon capture counterparty

269 Section 67 makes provision for Secretary of State to designate a person by notice, with the consent of that person, to be a counterparty to carbon capture revenue support contracts or a counterparty for any one or more descriptions of carbon capture revenue support contract. A carbon capture counterparty will enter into and manage contracts with eligible carbon capture entities.

270 Subsection (5) provides that more than one carbon capture counterparty may be designated at one time.

271 Subsection (6) deals with the continuity of carbon capture counterparties. If the designation of a carbon capture counterparty were to lapse, the Secretary of State must, as soon as reasonably practicable, make a transfer scheme under section 86, transferring contracts to a new carbon capture counterparty. This is designed to ensure that where a carbon capture counterparty ceases to be designated the contracts are transferred to a new carbon capture counterparty.

272 Subsection (7) defines “carbon capture entity” and “storage”.

273 Subsection (8) makes clear that for the purposes of the definition of “carbon capture entity”, carrying on carbon capture activities in the United Kingdom includes such activities in, above or below the territorial sea adjacent to the United Kingdom and waters in a Gas Importation and Storage Zone.

Section 68: Direction to offer to contract with eligible carbon capture entity

274 Section 68 confers a power on the Secretary of State to issue a direction to a carbon capture counterparty to offer a contract to eligible carbon capture entities in accordance with provisions set out in regulations.

275 Subsection (4) requires that revenue support regulations determine what persons are eligible. Subsection (5) provides that such regulations may make provision by reference to standards or other published documents external to the regulations, as the documents have effect from time to time.

Section 69: Appointment of hydrogen levy administrator

276 Section 69 makes provision for the Secretary of State to make regulations appointing a person to act as a hydrogen levy administrator. Subsection (2) provides that more than one administrator may be appointed at one time.

277 Subsection (5) deals with the continuity of administrators. If the appointment of a levy administrator ceases to have effect, the Secretary of State must, as soon as reasonably practicable, make one or more transfer schemes under section 86 to ensure the transfer of any rights and liabilities that the Secretary of State considers appropriate.

Section 70: Obligations of relevant market participants

278 Section 70 enables revenue support regulations to make provision requiring relevant market participants to pay a hydrogen levy administrator, so that a hydrogen production, hydrogen transport, or hydrogen storage counterparty can make payments under, or in connection with, hydrogen production, hydrogen transport, or hydrogen storage revenue support contracts.

279 Regulations may also allow for payments to a hydrogen levy administrator to be used to enable a CO_2 transport and storage counterparty to make payments under, or in connection with, CO_2 transport and storage revenue support contracts for purposes connected with hydrogen production revenue support contracts. This would allow levy payments to be used to provide funding for CO_2 transport and storage revenue support contracts in cases where shortfalls in a CO_2 transport and storage licensee's 'allowed revenue' are caused by low carbon hydrogen producers who are expected to be connected to that licensee's transport and storage network and are parties to hydrogen production revenue support contracts, for example: shortfalls caused by a low carbon hydrogen producer leaving a transport and storage network before its contracted capacity booking has expired.

280 Subsection (2) specifies that revenue support regulations may make provision for relevant market participants to make payments to a hydrogen levy administrator for the purpose of meeting other costs. Payments may also be required to enable a levy administrator to hold sums in reserve and to mutualise costs across relevant market participants to cover payments not made by an insolvent or defaulting participant. Subsection (4) enables revenue support regulations to make provision requiring these market participants to provide collateral.

281 Subsection (3) enables the revenue support regulations to make provision about the calculation and determination of amounts that are to be paid by a hydrogen levy administrator, including provision for adjustments or apportionments.

282 Subsection (8) provides that relevant market participants will be specified in regulations, but a description of relevant market participants may not include persons other than GB gas shippers and/or Northern Ireland gas shippers (as defined in section 56).

Section 71: Payments to relevant market participants

283 Section 71 deals with payments from a relevant counterparty and/or hydrogen levy administrator to market participants who are obliged to pay a hydrogen levy.

284 Subsection (1) enables regulations to make provision about payments to be made to relevant market participants by a relevant counterparty and/or hydrogen levy administrator, for example the pass through of payments received by a hydrogen production counterparty from a hydrogen producer under a hydrogen production revenue support contract.

285 Subsection (2) sets out that regulations may make provision regarding the calculation or determination of amounts which are owed by a relevant counterparty and/or hydrogen levy administrator and the issuing of notices requiring payment.

286 Subsection (3) enables the Secretary of State to make provision in regulations requiring that customers of market participants who are obliged to pay the levy benefit, in accordance with those regulations, from payments made to those market participants by a relevant counterparty and/or hydrogen levy administrator.

287 Subsection (4) defines a 'relevant counterparty' for the purposes of this section.

Section 72: Functions of hydrogen levy administrator

288 Section 72 enables revenue support regulations to make provision specifying things that a hydrogen levy administrator must, can or cannot do. It also enables revenue support regulations to make provision about the making of directions to a levy administrator.

289 Subsections (3) to (4) enable revenue support regulations to make provision about various matters such as the calculation and collection of amounts owed or collateral to be provided, including by means of the issuing of notices, the enforcement of obligations and the resolution of disputes.

290 Subsection (5) requires revenue support regulations to provide for a right of appeal against any imposition of a financial penalty provided for by the regulations by virtue of subsection (3)(d).

291 Subsection (6) clarifies that any sum which a relevant market participant is required to pay a hydrogen levy administrator by virtue of the revenue support regulations, and which is not paid when it is due by virtue of the regulations, is recoverable as a civil debt.

292 Subsections (7) and (8) enable revenue support regulations to make provision about the use of sums a hydrogen levy administrator holds and for the circumstances where sums held should or should not be paid into the Consolidated Fund.

Section 73: Power to appoint allocation bodies

293 Section 73 makes provision for the Secretary of State to appoint a person, with the consent of that person, to act as an allocation body responsible for administering the competitive allocation process for the hydrogen production and carbon capture revenue support contracts. The main purpose of these appointments would be to impose obligations on, and set out functions of, an allocation body in relation to administering the relevant competitive allocation process.

294 Subsection (4) confers a power on the Secretary of State to make provision in regulations about how cessation of an appointment is to take place, including any conditions or transitional provisions. This may include requiring an allocation body to give a specified period of notice when withdrawing its consent to its appointment.

Section 74: Standard terms of revenue support contracts

295 Section 74 gives the Secretary of State power to issue and, from time to time, revise standard terms for hydrogen production revenue support contracts and carbon capture revenue support contracts.

296 Subsection (4) places the Secretary of State under a duty to publish standard terms as issued or revised under this section. Subsection (5) allows the Secretary of State to designate those standard terms that may not be modified under section 78. Subsection (6) would allow for different standard terms to be issued for different categories of contract (for example, to specifically tailor for waste management projects).

Section 75: Allocation notifications

297 Section 75 sets out how an allocation body is to notify a hydrogen production or carbon capture counterparty of an allocation decision. Subsection (1) and (2) states that such a notification must specify the eligible person and such other information as may be required for the purpose of making an offer to contract. Subsection (4) allows for regulations to make further provision, including the circumstances in which a notification may or must be given and the kinds of information that must be specified in a notification.

Section 76: Allocation of contracts

298 Section builds on the power in section 75 and specifies the process by which the Secretary of State may make provision setting out detailed rules about the process for allocating hydrogen production revenue support contracts and carbon capture revenue support contracts. Subsection (1) confers a power enabling the Secretary of State to make provision in regulations setting out how hydrogen production and carbon capture revenue support contracts are to be allocated to eligible persons. Subsection (2) allows the Secretary of State to make provision in regulations conferring a power on the Secretary of State to set the rules of allocation in an "allocation framework". An "allocation framework" will be produced and published for allocation rounds. The "allocation framework" will act as a "rule book" for how allocation rounds will operate. Subsection (2)(e) confers a power enabling the Secretary of State to make provision about what may or must be included in an "allocation framework".

299 Subsection (3) confers a power enabling the Secretary of State to set out in regulations requirements on the Secretary of State.

300 Subsection (7) allows any allocation framework made to be amended, and subsection (8) provides that subsections (4) to (7) regarding allocation frameworks are subject to any provision in regulations which could set limits on what can be contained in the allocation framework.

Section 77: Duty to offer to contract following allocation

301 Section 77 sets out how a hydrogen production or carbon capture counterparty must act upon a notification from an allocation body to offer to contract. Subsection (1) and (2) place a duty on a hydrogen production and carbon capture counterparty to offer a contract to the eligible person specified in a notification and requires that this offer be on the standard terms, or on the standard terms as modified in accordance with the procedure provided for in section 78.

302 Subsection (3) confers a power on the Secretary of State to make further provision in regulations regarding matters such as how a hydrogen production or carbon capture counterparty is to apply or complete the standard terms in response to a notification and how the eligible person to whom the offer is made may enter into a contract as a result.

Section 78: Modification of standard terms

303 Section 78 enables a hydrogen production or carbon capture counterparty to agree modifications to the standard terms with low carbon hydrogen producers or carbon capture entities, on a case-by-case basis, pre-signature. These adjustments may be required because while the standard terms should be applicable for most low carbon hydrogen producers or carbon capture entities, it is not possible for the standard terms to anticipate every technology or project specific issue.

304 This flexibility is constrained in order to reduce the risk of applicants using it to negotiate improvements to the standard terms for competitive reasons. Subsection (3) specifies that a modification can only be agreed if it is both 'minor' and 'necessary', as determined by a hydrogen production or carbon capture counterparty, following any relevant provision made in regulations. Modification can also only be agreed if the standard term has not been designated under section 74(5) as a term that may not be modified under this section. Subsection (4) provides for further provision to be made in regulations, including regarding the circumstances in which an applicant may request a modification, the procedure to be followed in requesting a modification, and how a hydrogen production or carbon capture counterparty is to make a determination on such a request.

Section 79: Sections 75 to 78: supplementary

305 Section 79 confers a power enabling the Secretary of State to, when making provision under the powers in sections 75 to 78, make further provision enabling the determination of a matter on a competitive basis and calculations or determinations to be made under regulations, including by such persons and in accordance with such procedure as is specified.

Section 80: Licence conditions regarding functions of certain allocation bodies

306 Subsection (1) inserts provisions into section 7B of the Gas Act 1986 which specify that a gas system planner licence, under section 7AA of the Gas Act 1986, may include conditions for or in connection with the purpose of facilitating or ensuring the effective performance (whether in relation to Northern Ireland or any other part of the United Kingdom) of hydrogen production allocation body functions under Chapter 1 of Part 2 of this Act, at times when the hydrogen production allocation body holds a licence under Section 7AA.

307 Subsection (2) sets out that where GEMA proposes to modify a gas system planner licence under Section 23 of the Gas Act 1986 by adding, removing or altering a condition such as is mentioned in Section 7B(5ZA) of the Gas Act 1986 (as inserted by subsection (1) of this section) and that condition relates to functions of a hydrogen production allocation body that are exercisable in relation to Northern Ireland, GEMA must notify the Department for the Economy in Northern Ireland in accordance with section 23 of the Gas Act 1986.

Section 81: Further provision about designations

308 Under subsection (1) the designation of a person as a revenue support counterparty can be revoked by the Secretary of State. Designation will also cease to have effect if a revenue support counterparty elects to withdraw its consent and gives at least three months prior written notice to the Secretary of State of that withdrawal.

309 Subsections (2) and (4) deal with the continuity of counterparties.

Section 82: Application of sums held by a revenue support counterparty

310 Subsection (1) enables the revenue support regulations to make provision about the allocation of sums in circumstances where a revenue support counterparty is unable to fully meet its liabilities under a revenue support contract. In making such provision, the Secretary of State must have

regard to the principle that sums should be apportioned in proportion to the amounts which are owed (subsection (3)).

311 Subsections (4) and (5) enable the revenue support regulations to make provision about the use of sums a revenue support counterparty holds and for the circumstances where monies received should or should not go to the Consolidated Fund.

Section 83: Information and advice

312 Section 83 enables the revenue support regulations to make provision to ensure that information and advice required for the functioning of the schemes is provided to the bodies requiring it at appropriate points, including from parties to revenue support contracts, the Gas and Electricity Markets Authority, relevant market participants, and any other person specified in revenue support regulations. It enables revenue support regulations to make provision governing the use and protection of information so received to ensure it is handled in an appropriate manner.

313 It will also allow the Secretary of State to monitor the schemes and for the Secretary of State to require advice from various bodies, including a revenue support counterparty, a hydrogen levy administrator, the Gas and Electricity Markets Authority, and an allocation body for making decisions about the running of the schemes.

Section 84: Enforcement

314 Section 84 deals with the enforcement of requirements under revenue support regulations and regulations under section 73.

315 Subsection (1) enables regulations to make provision for the obligations of certain relevant market participants provided for by revenue support regulations to be enforceable by the GEMA in Great Britain as if they were relevant requirements under sections 28 to 30 of the Gas Act 1986. Similarly, in the case of Northern Ireland, the section makes provision for the obligations of certain relevant market participants to be enforceable by the Northern Ireland Authority for Utility Regulation (NIAUR) as if they were relevant requirements under Part 6 of the Energy (Northern Ireland) Order 2003. Subsection (2) makes clear that enforcement includes enforcement under the terms of a licence. This means that a breach can be treated, in effect, as if it were a breach of a licence condition, thus allowing the GEMA and/or NIAUR to use its relevant enforcement powers such as issuing an order to secure compliance, imposing financial penalties and licence revocation.

316 Subsections (3) and (4) enable regulations to make provision for requirements that may be imposed on the holder of a gas system planner licence (expected to be the Independent System Operator and Planner) as hydrogen production allocation body by or under revenue support regulations or regulations under section 73 (including requirements in respect of functions of the body that relate to Northern Ireland) to be enforceable by the GEMA as if they were relevant requirements under Sections 28 to 30 of the Gas Act 1986.

Section 85: Consultation

317 Subsections (1) to (3) require that the Secretary of State must consult the Department for Economy in Northern Ireland, and Scottish and Welsh Ministers before making or amending revenue support regulations, where the matter being consulted on is within the legislative competence of the relevant devolved legislature. In addition, the Secretary of State must consult such other persons as he or she considers appropriate. The Secretary of State must consider representations duly made within a period of not less than 28 days and not withdrawn.

318 Subsection (4) requires that before making regulations under section 73(1) (power to appoint allocation bodies) the Secretary of State must consult the Department for Economy in Northern Ireland, and Scottish and Welsh Ministers, where the matter being consulted on is within the legislative competence of the relevant devolved legislature. The Secretary of State must consider representations duly made and not withdrawn.

319 Subsections (5) to (7) require that before publishing standard terms under section 74, the Secretary of State must consult the Department for Economy in Northern Ireland, and Scottish and Welsh Ministers, where the matter being consulted on is within the legislative competence of the relevant devolved legislature.

Section 86: Transfer schemes

320 Section 86 sets out the process by which the property, rights and liabilities of a revenue support counterparty, hydrogen levy administrator or allocation body may be transferred from one revenue support counterparty, hydrogen levy administrator or allocation body to another, should this prove necessary. This could prove necessary either because one of these bodies no longer wishes to continue in role, or because it has become inappropriate for them to be continue in one of these roles. It also sets out the process by which property, rights and liabilities of a hydrogen levy administrator are transferred to the Secretary of State, should this prove necessary. A scheme may provide for compensation for any property that is required to be transferred, where this is appropriate.

Section 87: Modification of transfer schemes

321 Section 87 enables the Secretary of State to modify transfer schemes. Modifications made after a transfer has taken effect may only be made by agreement with the transferor and/or transferee affected by the modification. Modifications come into effect on a date decided by the Secretary of State. That date may be the date on which the original transfer scheme took effect.

Section 88: Shadow directors, etc

322 Section 88 makes it clear that, in exercising their regulatory controls over a revenue support counterparty, neither the Secretary of State nor an allocation body are to be deemed to be in any way managing or controlling a counterparty in such a way that would class them as, for example, "shadow directors". Similar provisions apply in respect of the Secretary of State's exercise of regulatory controls over a hydrogen levy administrator and an allocation body.

Section 89: Modifications of licences etc for purposes related to levy obligations

323 Section 89 sets out the Secretary of State's power to make modifications of certain licences as well as documents maintained in accordance with those licences or agreements that give effect to such documents for the purpose of facilitating or supporting the administration and enforcement of a hydrogen levy.

324 Subsection (1) provides the Secretary of State with a power to modify gas transporter licences of energy market participants in Great Britain. The provisions also enable the Secretary of State to modify the standard conditions of such licences as well as documents maintained in accordance with the conditions of such licences (such as industry codes) or agreements that give effect to such documents. Subsection (2) provides a similar power in respect of Northern Ireland, enabling the Secretary of State to modify licences to convey gas. The provisions also enable the Secretary of State to modify the standard conditions of such licences as well as documents maintained in accordance with the conditions of such licences (such as industry codes) or agreements that give effect to such documents.

325 Subsection (3) specifies that the Secretary of State can only make such modifications for the purpose of facilitating or supporting the administration and/or enforcement of a hydrogen levy.

326 Subsections (4) and (5) provide further clarity regarding the types of modifications that the Secretary of State can make using the powers under subsections (1) and (2).

327 Subsections (7) and (8) set out duties of the GEMA and NIAUR with respect to any modifications of standard licence conditions made by the Secretary of State under the powers in subsections (1) and (2). Subsection (9) sets out the consultation requirements in relation to this section. Before making a modification, the Secretary of State must consult the holder of any licence being modified, and such other persons, as the Secretary of State considers it appropriate to consult.

Section 90: Electricity system operator and gas system planner licences: modifications

328 Subsections (1) and (2) provide the Secretary of State with a power to modify the electricity system operator licence and the gas system planner licence (as well as documents maintained in accordance with those licences or agreements that give effect to such documents) for the purpose of facilitating or ensuring the effective performance of functions of hydrogen production allocation bodies and other related functions under Chapter 1 of Part 2 of the Act.

329 Subsections (4) and (5) specify that modifications under subsections (1) and (2) may only make provision in relation to times when the person holding the licence is a hydrogen production allocation body, including consequential or transitional provision in relation to times when it is no longer the case that the person holding the licence is a hydrogen production allocation body.

330 Subsection (6) provides further clarity regarding the types of modifications that the Secretary of State can make using the powers under subsections (1) and (2).

331 Subsection (7) sets out the consultation requirements in relation to this section. Before making a modification, the Secretary of State must consult the holder of any licence being modified, the GEMA, and such other persons as the Secretary of State considers it appropriate to consult. Subsection (8) enables the requirement in subsection (7) to be satisfied by consultation before, as well as after, the passing of this Act.

Section 91: Sections 89 and 90: supplementary

332 Section 91 deals with the Parliamentary procedure for modifications made using sections 89 and 90 and makes supplementary provisions regarding the scope of those modification powers, as well as relevant consequential amendments to existing legislation.

333 Subsections (2) to (7) specify that, before making modifications under these powers, the Secretary of State must lay a draft of the modifications before Parliament, where they will be subject to a procedure analogous to the draft negative resolution procedure used for statutory instruments.

334 Subsections (8), (9), and (12) further clarify the scope of the modification powers.

335 Subsection (10) sets out a requirement on the Secretary of State to publish details of any modifications made under the powers.

336 Subsection (13) makes consequential amendments to section 81 of the Utilities Act 2000.

Chapter 2: Decommissioning of Carbon Storage Installations

Section 92: Financing of costs of decommissioning etc

337 Section 92 gives the Secretary of State a power to make regulations regarding the provision of security for decommissioning costs associated with CCUS transport and storage networks. These regulations may include provisions about (amongst other things): the estimation of decommissioning costs; and the management of decommissioning funds, as security for these costs.

Section 93: Section 92: supplementary

338 Section 93 sets out supplementary provisions which may be included in any regulations made under section 92: Financing of costs of decommissioning etc, such as provisions on supplying information and enforcement, and sets out the parliamentary procedure for any such regulations.

Section 94: Regulations under section 92(1): procedure with devolved authorities

339 Section 94 sets out a procedure for consultation with devolved authorities, where regulations under section 92 contain provision within devolved competence.

Section 95: Provisions relating to Part 4 of the Petroleum Act 1998

340 The decommissioning of offshore installations and pipelines used for carbon dioxide storage purposes is covered by Part 4 of the Petroleum Act 1998, as modified by section 30 of the Energy Act 2008 ("Modified Part 4 PA"). This section amends section 30 of the Energy Act 2008, including: amending the definition of carbon storage installation; clarifying that notices, requiring the recipient to submit a decommissioning programme, may be served on those with a licence under section 18 of the Energy Act 2008; and enabling further modifications to Modified Part 4 PA, in relation to the establishment of decommissioning funds to meet decommissioning costs, as set out in section 92: Financing of costs of decommissioning etc. This section also includes an amendment to section 29(6) of the Petroleum Act 1998.

Section 96: Change of use relief: installations

341 Sections 30A and 30B of the Energy Act 2008 make provision for a person to qualify for change of use relief on installations and submarine pipelines converted for CCS demonstration projects (the latter term having the meaning given in section 7 of the Energy Act 2010). This relief removes the ability for the Secretary of State, in some circumstances, to take the following steps under Part 4 of the Petroleum Act 1998:

- issue a notice under section 29(1) (requiring the submission of an abandonment programme for an installation), or
- to impose a decommissioning obligation under section 34.

342 This section makes amendments to section 30A of the Energy Act 2008, broadening the scope of change of use relief: so that it applies to eligible CCS installations more generally; and amending the trigger point to qualify for such relief.

Section 97: Change of use relief: carbon storage network pipelines

343 Similar to section 96: Change of use relief: installations, this section makes amendments to section 30B of the Energy Act 2008, broadening the scope of change of use relief: so that it applies to eligible carbon storage network pipelines more generally; and amending the trigger point to qualify for such relief.

Section 98: Change of use relief: supplementary

344 This section gives the Secretary of State a power to make regulations regarding the provision of information where this relates to change of use relief. This section also makes a consequential amendment to section 105 of the Energy Act 2008.

Chapter 3: Strategy and Policy Statement

Section 99: Designation of strategy and policy statement

345 While day-to-day regulatory decisions will be made independently by the economic regulator, policy direction for CCUS will continue to be directed by the Government. This section provides that the Secretary of State may designate a strategy and policy statement for CCUS. Such a statement would set out the strategic priorities for CCUS policy; the particular outcomes to be achieved as a result of the implementation of that policy; and the roles and responsibilities of persons who are involved in implementing that policy or who have other functions that are affected by it.

Section 100: Duties with regard to considerations in the statement

346 Section 100 imposes a duty on the economic regulator to have regard to specified matters when carrying out functions and provides that the economic regulator and the Secretary of State must carry out their respective CCUS-related functions under Parts 1 and 2 of this Act in the manner considered best calculated to further the delivery of the policy outcomes set out in the CCUS strategy and policy statement.

Section 101: Review

347 Section 101 establishes timeframes and circumstances for reviewing a CCUS strategy and policy statement. CCUS strategy and policy statements should be reviewed no more frequently than once a Parliament to ensure a stable and predictable regulatory landscape for investors, unless the circumstances specified in this section have occurred. These circumstances include that a general election has taken place, or that there has been a material change in CCUS policy.

Section 102: Procedural requirements

348 Section 102 establishes procedural and consultation requirements which the Secretary of State must observe in developing and publishing a strategy and policy statement for CCUS and before the Secretary of State may designate it. This follows a similar procedural precedent for designating a strategic and policy statement under Part 5 of the Energy Act 2013 and is also intended to enable a single strategy and policy statement which covers both energy and CCUS policy but relies on the powers in both the Energy Act 2013 and this Act, if appropriate.

349 The consultation requirements under this provision apply to a strategy and policy statement before it is designated and in respect of any amendments that are proposed to a strategy and policy statement following a review under section 101. It is the Government's intention that for an initial strategy and policy statement, and for subsequent material amendments that may be proposed as a result of the review process set out in section 101, that in addition to the required consultees set out at section 102(4), further consultation as provided for at section 102(5)(b) would

follow the Government's consultation principles.[37]

Chapter 4: Carbon Dioxide Storage Licences

Section 103: Specified provisions in carbon dioxide storage licences

350 Section 103 sets out that amendments will be made by Schedule 6 to the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 in order to introduce new ex-ante (before the event) powers for the Oil and Gas Authority (OGA) regarding the change of control of a company in relation to all Carbon Storage Licensees. This is to ensure that the governance, technical and financial capability of a Licensee in possession of a Carbon Storage Licence is not undermined by an undesirable change of control. This is to replace the OGA's existing ex-post (after the event) powers to intervene after the change of control of a Licensee.

Section 104: Content of storage permits under carbon dioxide storage licences

351 Section 104 amends regulation 8 of the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 to allow the revocation of storage permits under Carbon Dioxide Storage Licences for breach of the change in control provisions by the operator.

Section 105: Offences relating to carbon dioxide storage licences

352 Section 105 amends section 23 of the Energy Act 2008 ("section 23") regarding existing offences in relation to Carbon Storage Licensees. This is to ensure that relevant Licensees do not commit an offence under that legislation in relation to the change of control of a company, in circumstances where prior consent from the OGA has not been obtained.

Section 106: Power of OGA to require information about change in control of licence holder

353 Section 106 inserts a new section 29A into the Energy Act 2008 to provide powers to the OGA to request information required by it to exercise its functions in relation to a change or potential change of control of a Carbon Storage Licensee.

Chapter 5: Carbon Storage Information and Samples

Section 107: Chapter 5: key definitions

354 Section 107 provides key definitions for the purposes of the following chapter, to ensure an effective understanding of all carbon storage information and samples provisions.

Section 108: Retention of information and samples

355 Section 108 provides power for the Secretary of State to make regulations regarding the retention of information and samples by carbon storage licensees.

356 Before making regulations, the Secretary of State is required to consult the relevant carbon storage licensing authorities (established in section 18 of the Energy Act 2008) in respect of any areas where such regulations would apply.

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[37] https://www.gov.uk/government/publications/consultation-principles-guidance

Section 109: Preparation and agreement of information and samples plans

357 Section 109 provides requirements for the preparation and agreement of information and samples plans for the purposes of dealing with what will happen to carbon storage information and samples following changes in responsible persons in respect of different licence events; for example, where there has been a change of control of a company.

Section 110: Information and samples plans: supplementary

358 Section 110 provides further details regarding information and samples plans requirements under section 109.

Section 111: Information and samples coordinators

359 Section 111 places requirements upon carbon storage licensees and exploration operators to appoint an individual as an Information and Samples Coordinator.

360 An Information and Samples Coordinator is responsible for monitoring the compliance of the licensee and exploration operator with any obligations imposed by or under sections 110 and 111.

Section 112: Power of OGA to require information and samples

361 Section 112 establishes powers for the OGA to require their carbon storage licensees (and certain other persons) to report any carbon storage information or samples they currently hold (or that are held on their behalf) to the OGA, in support of their regulatory functions.

362 It is intended that the OGA will utilise this power once detailed requirements for the retention of information and samples have been established in regulations under section 108.

Section 113: Prohibition on disclosure of information or samples by OGA

363 Section 113 places a prohibition upon the disclosure of any information and samples by the OGA that were obtained under reporting requirements in section 112. It also places a prohibition upon the disclosure of information and samples by the OGA that was obtained under section 124, the power to obtain information for the purposes of an investigation into whether a person has failed to comply with one of the sanctionable requirements under this Chapter.

364 This section also introduces Schedule 7, which provides exceptions to the prohibition on disclosure.

Section 114: Power of Secretary of State to require information and samples

365 Section 114 provides power for the Secretary of State to require information and samples held by or on behalf of the OGA to be provided to the Secretary of State for certain specific purposes.

366 This section reflects the equivalent powers established for the petroleum industry under section 11 of the Energy Act 2016.

Section 115: Power of OGA to give sanction notices

367 Section 115 provides powers for the OGA to give sanction notices to persons who have failed to comply with the carbon storage information and samples requirements imposed by or under this Chapter.

Section 116: Enforcement notices

368 Section 116 sets out what an enforcement notice (which can be given by the OGA under powers in section 115) is and what information it should contain.

Section 117: Financial penalty notices

369 Section 117 provides for financial penalty notices (which can be given by the OGA under powers in section 115). It sets out what such a notice should contain, sets out some procedural requirements, provides for a statutory maximum penalty and requires the OGA to issue guidance concerning how it will determine the amount of the financial penalty.

370 Any financial penalties are to be paid into the Consolidated Fund.

371 Subsection 10 establishes power for the Secretary of State, by regulations, to amend the financial penalty to a maximum value of £5 million.

Section 118: Revocation notices

372 Section 118 provides for revocation notices, which can be given by the OGA under powers in section 115.

373 This section enables the OGA to terminate a carbon storage licence or permit, for the failure to comply with a requirement imposed by or under this Chapter.

Section 119: Operator removal notices

374 Section 119 provides for operator removal notices, which can be given by the OGA under powers in section 115.

375 This section places a requirement upon the licensee to remove an exploration operator for their failure to comply with a requirement imposed by or under this Chapter.

Section 120: Duty of OGA to give sanction warning notices

376 Section 120 establishes a duty requiring the OGA to give a sanction warning notice where it proposes to give a sanction notice under powers in section 115.

Section 121: Publication of details of sanctions

377 Section 121 provides for the OGA to publish details of any sanction notices given under powers in section 115.

378 The details allowed to be published exclude those considered to be commercially sensitive, not in the public interest, or otherwise inappropriate to publish.

Section 122: Subsequent sanction notices

379 Section 122 enables the OGA, in certain circumstances, to give more than one sanction notice in respect of the same failure to comply, under powers in section 115.

Section 123: Withdrawal of sanction notices

380 Section 123 enables the OGA to withdraw any sanction notice they have given under section 115 and requires the OGA to notify the relevant persons to whom the notice was given that the notice has been withdrawn.

Section 124: Sanctions: information powers

381 Section 124 provides powers for the OGA to require specified documents and information to support an investigation into the decision to give a sanction notice, or on what terms one should be given, under powers in section 115.

Section 125: Appeals

382 Section 125 introduces Schedule 8 (*Carbon storage information and samples: appeals),* with a purpose of ensuring the right of appeal for carbon storage licence holders against any decisions made by the OGA in relation to the enforcement of sanctionable requirements under this Chapter.

383 Any appeals would be made to the first-tier tribunal.

Section 126: Procedure for enforcement decisions

384 Section 126 establishes requirements for the OGA to determine and publish the procedure it proposes to follow in their decision-making to give sanction notices under section 115.

Section 127: Interpretation of Chapter 5

385 Section 127 provides further definitions to aid the interpretation of provisions in this Chapter, cross-referencing the relevant existing legislation, where appropriate.

Chapter 6: General

Section 128: Access to infrastructure

386 Section 128 enables the Secretary of State to make regulations regarding access to CO_2 transport and storage infrastructure, and that these regulations may amend, revoke, or replace or make provision similar or corresponding to, the Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011 (S.I. 2011/2305) and the Storage of Carbon Dioxide (Access to Infrastructure) Regulations (Northern Ireland) 2015 which govern access rights to CO_2 transport and storage infrastructure.

387 Regulations made under this power may confer functions on any person and may make provision regarding enforcement in relation to access rights. In relation to enforcement, regulations may create criminal offences or impose civil penalties, and may confer jurisdiction on a court or tribunal. Where regulations impose a civil penalty, they must also provide for a right of appeal against the imposition of the penalty.

Section 129: Financial assistance

388 Section 129 makes provision for the Secretary of State to incur expenditure and provide financial assistance for the purpose of encouraging, supporting or facilitating:

- The transportation of carbon dioxide,
- The storage of carbon dioxide,
- Carbon dioxide capture facilities, which operate (or are to operate) in association with facilities for either or both of transport and storage of carbon dioxide,
- Low carbon hydrogen production,
- The transportation of hydrogen, and
- The storage of hydrogen.

389 The main purpose of this power is to enable the Government to incur such costs or liabilities and provide such financial assistance as the Secretary of State considers necessary and proportionate to incentivise investment in, and facilitate the delivery of carbon capture, transportation and storage of carbon dioxide and hydrogen, and low carbon hydrogen production. Financial assistance in

relation to carbon capture and storage may include, for example, support for industrial carbon capture, waste carbon capture, bioenergy with carbon capture or direct air capture.

390 The scope of the financial assistance power in this Part of the Act allows for financial support to be provided for a range of CCUS activities, should such support be considered appropriate. This compares to the narrower scope of the economic regulation and licensing framework in Part 1 of the Act, which is concerned, initially, with the licensing of pipeline transportation of carbon dioxide for geological storage, given the natural monopoly characteristics of these transport and storage assets.

391 Subsection (2) and (3) contain specific examples of where the Secretary of State may incur expenditure. Financial assistance may be provided by way of grants, loans, guarantees or indemnities or by the provision of insurance, or in any other form, and may be provided subject to conditions or provided under a contract.

392 For the purpose of this section, subsection (6) makes provision about the interpretation of certain terms.

Part 3: Licensing of Hydrogen Pipeline Projects

Section 130: Key definitions for Part 3

393 Section 130 defines key terms that are used in Part 3.

Section 131: Designation

394 Section 131 provides the Secretary of State with the power to designate, by notice, a consenting person in relation to a hydrogen pipeline project. The Secretary of State may only exercise the power to designate if the conditions set out in subsection (2) are met.

395 An individual designation can only relate to one hydrogen pipeline project, but a person who is designated in relation to one project can be designated separately in relation to another.

396 Designation triggers the ability for the Secretary of State to use other powers in this new Part to implement a Regulated Asset Base model (RAB) in respect of the designated person and project, such as powers to grant, extend and/or modify a gas transporter licence.

Section 132: Designation: procedure

397 Section 132 requires the Secretary of State to publish a statement setting out the procedure that is expected to be followed in determining whether to exercise the power to designate a person in relation to a hydrogen pipeline project, as well as setting out how the Secretary of State expects to determine whether the conditions to designation under subsection (2) of Section 131 are met.

398 This section also sets out various procedural requirements that apply in respect of the exercise of the Secretary of State's power to designate, including requirements as to the content and publication of a designation notice.

Section 133: Revocation of designation

399 Section 133 makes provision about the circumstances in which a person's designation in relation to a hydrogen pipeline project may be revoked, and about the procedure for revocation. A designation may be revoked if: either of the conditions under subsection (2) of Section 131 cease to be met in relation to the project, the Secretary of State determines that a condition to which the designation is subject has not been met, or the person consents to the designation being revoked.

400 Subsection (4) makes clear that the revocation of a designation does not affect anything done by the Secretary of State in relation to the person’s gas transporter licence under or by virtue of this new Part while the person was designated in relation to the project.

Section 134: Grant, extension or restriction of gas transporter licence by Secretary of State

401 Section 134 allows the Secretary of State, in specified circumstances, to exercise certain powers conferred on the Gas and Electricity Markets Authority (“GEMA” or “the Authority”) by section 7 of the Gas Act 1986 to grant, extend or restrict gas transporter licences. Those circumstances include, for example, where the licences are to be granted to, or are or were held by, designated persons and authorise the conveyance of hydrogen through pipes for the purposes of the person’s designated project.

402 This section is intended, alongside others, to provide the Secretary of State with powers to implement, via gas transporter licence conditions, a RAB in respect of hydrogen pipeline projects.

403 Subsection (6) requires the Secretary of State to have regard to specified matters when granting or extending a gas transporter licence by virtue of this section.

404 Subsection (8) makes clear that a gas transporter licence granted, extended or restricted by the Secretary of State by virtue of this section has effect for all purposes as if it had been granted, extended or restricted by the GEMA.

Section 135: Applications for grant etc of gas transporter licence

405 Section 135 confers a power for the Secretary of State to make regulations about the making, consideration and determination of relevant applications for the grant, extension or restriction of a gas transporter licence. Subsection (2) defines a “relevant application”.

406 Subsection (5) requires the Secretary of State to consult the GEMA before making regulations under this section.

407 Subsection (6) provides that so far as regulations under this section apply to an application for the grant, extension or restriction of a gas transporter licence, section 7B(1) to (2A) of the Gas Act 1986 does not apply to that application.

Section 136: Modification of gas transporter licence by Secretary of State

408 Subsection (1) of this section gives the Secretary of State power to modify the conditions or terms of a designated person’s gas transporter licence, as well as standard conditions of gas transporter licences and certain documents or agreements such as industry codes. Subsection (2) provides that such modifications can only be made for the purpose of facilitating or supporting the financing of the design, construction, commissioning or operation of a hydrogen pipeline project (or of hydrogen pipeline projects generally) or promoting value for money in connection with a hydrogen pipeline project (or in connection with hydrogen pipeline projects generally).

409 Subsection (3) requires the Secretary of State to have regard to specified matters when modifying the conditions or terms of a designated person’s gas transporter licence under subsection (1). Subsection (4) gives the Secretary of State power to modify the conditions or terms of a gas transporter licence held by a person who is or was a designated person where modification is in connection with the revocation of the person’s designation in relation to a hydrogen pipeline project.

Section 137: Scope of modification powers under section 136

410 Section 137 makes provision about the scope of the modifications that the Secretary of State may make under section 136.

Section 138: Procedure etc relating to modifications under section 136

411 Section 138 sets out various procedural requirements relating to modifications under section 136.

412 Subsection (1) requires the Secretary of State, before making a modification, to consult the holder of any licence being modified, the GEMA and such other persons as the Secretary of State considers appropriate.

413 Subsection (3) requires the Secretary of State to publish details of any modifications as soon as reasonably practicable after they are made.

Section 139: Information and advice

414 Section 139 confers power on the Secretary of State to make regulations about the provision and publication of information and advice in connection with the carrying out of functions under or by virtue of this new Part.

415 Subsection (3) provides that restrictions on disclosure of information under section 105(1) of the Utilities Act 2000 do not apply to a disclosure required by virtue of this section.

Section 140: Conditions of gas transporter licences for conveyance of hydrogen

416 Subsection (2) of this section provides that conditions described in subsection (3) may be included in a gas transporter licence so far as it authorises a person to convey hydrogen through pipes in connection with the carrying on of a hydrogen pipeline project (a "relevant licence" as defined by subsection (1)). These conditions include mandating that a licence holder comply with a direction requiring it to share with a "candidate" information in relation to the activities authorised by the licence.

417 The candidate can be an applicant, or potential applicant, for a relevant licence, or a person considering whether to apply for financial support for activities relating to the production, transportation, storage or use of hydrogen (for example, the hydrogen production business model).

418 Subsection (4) sets out limitations to modifications of the conditions of relevant licences under section 8(3) of the Gas Act 1986. In granting a relevant licence, the Secretary of State or the GEMA (as appropriate) may only modify conditions of that licence under section 8(3) of the Gas Act 1986 if they are of the opinion that the licence holder would not be unduly disadvantaged in competing with other holders of relevant licences, and no other holder of a relevant licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence to be modified).

Section 141: Secretary of State directions to the GEMA

419 Subsection (1) of this section requires the GEMA, in exercising functions in relation to relevant gas transporter licences, to comply with general or particular directions given to it by the Secretary of State for the purpose of promoting value for money in connection with a hydrogen pipeline project (or in connection with hydrogen pipeline projects generally).

420 Subsection (2) defines a "relevant gas transporter licence" as a gas transporter licence, held by a designated person, that authorises the conveyance of hydrogen through pipes in connection with the person's designated project.

Section 142: Repeal of Part 3

421 Section 142 enables the Secretary of State, by regulations, to repeal any of the preceding provisions of this new Part. For example, when government intervention is considered to be no longer required in the allocation and implementation of a RAB in respect of hydrogen pipeline projects.

422 Subsection (2) provides that if any of the provisions remain in force on 31 December 2040 and each five-year anniversary of that date (a "relevant date"), the Secretary of State is required to consider whether it is appropriate to repeal that provision and, if satisfied that it is not appropriate to do so, to publish a statement explaining why not. Such statement must be published no later than three months after the relevant date.

Part 4: New Technology

Chapter 1: Low-Carbon Heat Schemes

Section 143: Low-carbon heat schemes

423 This section provides the Secretary of State with powers to set up a scheme through secondary legislation to encourage the sale and installation of low-carbon heating technologies, such as electric heat pumps. Subsection (3)(b) allows for this to include, for instance, hybrid heat pump systems that involve both a heat pump and a fossil fuel boiler.

Section 144: Application of scheme

424 This section provides for secondary legislation ('the regulations') to define the 'participants' who will be subject to targets under a low-carbon heat scheme, for instance companies involved in the manufacture and supply of a certain type of product. It also provides for the determination of the technologies, within the broader set established in section 143, to which those targets will apply.

425 Subsection (5) allows the regulations to specify circumstances in which credit for activities may be carried from one period to the next; a degree of 'banking' and/or 'borrowing' of credits is sometimes a feature of such schemes.

Section 145: Setting of targets etc

426 Building on section 144, this section makes further provision in relation to how targets for a scheme may be set in or under the regulations. In particular, it provides for targets to vary for different low-carbon heating technologies or for different weightings to be given to how different technologies or activities meet the targets.

427 This would allow, for example, for standalone electric heat pumps to be treated differently under the scheme from hybrid heat pumps that incorporate or operate in conjunction with a fossil fuel combustion appliance, for example: a '0.5' weighting for a hybrid system that comprises a heat pump and a fossil fuel boiler.

Section 146: Further provision about scheme regulations

428 This section sets out various operational and administrative features of the scheme that the regulations may (and, in the case of determinations about meeting targets under subsection (1), must) provide for.

429 Subsection (3) allows the regulations to specify how either scheme targets or credit for activities related to meeting targets, in the form of certificates, might be 'pooled' among or transferred between parties, including (in the case of certificates and transfers) parties not otherwise in scope of the scheme targets. This would allow, for instance, for the trading of certificates which parties

could acquire and use as part of meeting their target for a given period, instead of carrying out relevant activities themselves. This could allow for the emergence of a market in such certificates.

430 Subsection (4) provides for regulations to be made about the consequences or options for parties failing to meet targets under the scheme. This could include, for instance, establishing a framework of payments in lieu, sometimes referred to in similar schemes as 'buyout' payments.

Section 147: Administration of scheme

431 This section is largely self-explanatory. Subsection (6) provides for limited circumstances under which scheme regulations could make amendments to primary legislation if appropriate in order to enable a public authority appointed as a scheme's administrator to carry out its functions under the scheme.

Section 148: Enforcement, penalties and offences

432 This section provides for the regulations to enable the administrator to conduct a range of enforcement activities. It also provides for the regulations to specify civil penalties for non-compliance with requirements of a scheme and to create criminal offences. Subsection (7) specifies that the sanction for such offences would be a fine. Non-compliance could include, for instance, failure to provide required information, failure to make payments in lieu of unmet targets, or making false or fraudulent representation to the scheme administrator.

433 Subsection (2) provides for the regulations to specify conditions in which an administrator may treat one party's targets or activities under the scope of the scheme as another's. This would allow, for instance, for targets and activities towards meeting targets to be applied to a group of parties collectively, rather than at the level of individual companies or subsidiaries.

Section 149: Application of sums paid by virtue of section 146(4) or 148(3)

434 This section is self-explanatory.

Section 150: Appeals

435 This section is self-explanatory.

Section 151: Scheme regulations: procedure, etc.

436 This section establishes procedural requirements for the making of scheme regulations. These depend on the matters covered in the regulations. Subsection (2) sets out when such a statutory instrument would be subject to the affirmative parliamentary procedure. This includes the creation of new offences, the amendment of primary legislation, and a class of changes that would substantially alter or extend the scope of the scheme, for instance to apply low-carbon heat targets to a new class of parties or technologies. Other statutory instruments relating to the scheme would be made under the negative resolution procedure (subsection (1)).

Section 152: Interpretation of Chapter 1

437 This section is self-explanatory.

Chapter 2: Hydrogen Grid Conversion Trials

Section 153: Modifications of the gas code

438 The provisions in this section only apply to a hydrogen heat grid conversion trial, which is defined in subsection (1).

439 Section 153 makes certain modifications to the Gas Act 1986. These modifications build on the existing provisions in the Gas Act 1986, in particular on powers of entry, and seek to enable the safe and effective delivery of the hydrogen heat village trial.

440 Subsections (2) to (5) make modifications to the Gas Act 1986 so that the person running the trial has clear grounds to enter private properties to:

a. carry out any essential works for the purposes of the trial, including safety measures such as replacing appliances and installing and testing safety valves,

b. undertake inspections and tests for the trial such as safety checks, and

c. disconnect the gas supply in a property.

441 The section also modifies the Rights of Entry (Gas and Electricity Boards) Act 1954 so that the provisions in that Act which relate to a relevant power of entry apply as though references to a gas operator include a person conducting the trial.

442 Gas Distribution Network operators (GDNs) already have powers of entry into properties, which we are extending in a very limited way specifically to conduct necessary activities to set up and deliver a safe trial. These powers will only be used as a last resort, for example to inspect and test pipes and valves to ensure consumer safety. They will ensure that consumers in the trial area can be safely connected to hydrogen instead of natural gas. The existing rules on powers of entry will apply, which require the GDN to obtain a warrant from a Magistrate's court to use these powers.

Section 154: Regulations for protection of consumers

443 Subsection (1) provides the Secretary of State with a power to make regulations by statutory instrument to require a person conducting the trial to follow specified steps to ensure consumers are appropriately informed about the trial and the need for them to be disconnected from their gas supply before it happens.

444 This section also provides the Secretary of State with a power to make regulations to introduce consumer protections for people who are, or are likely to be, affected by the trial. A list of example provisions is provided in subsection (5).

Chapter 3: Miscellaneous

Section 155: Power to modify Gas Act 1986 in relation to hydrogen

445 Subsection (1) of section 155 gives the Secretary of State the power to make regulations that provide for any provision of the Gas Act 1986 not to apply or to apply with modifications, in relation to the production, transportation, storage or use of hydrogen. Subsection (2) provides that this power may be exercised by amending the Gas Act 1986.

446 Subsection (3) provides that this power may only be exercised for the purpose of facilitating or promoting the production, transportation, storage or use of hydrogen.

447 Subsection (4) requires the Secretary of State, before exercising this power, to consult the GEMA and such other persons as the Secretary of State considers appropriate.

Section 156: Fusion energy facilities: nuclear site licence not required

448 Section 156 amends the Nuclear Installations Act 1965 to confirm the exclusion of fusion energy facilities from nuclear site licencing requirements.

449 This section also defines the term "fusion energy facility."

Section 157: Treatment of recycled carbon fuel and nuclear-derived fuel as renewable transport fuel

450 Section 157 provides for recycled carbon fuels and fuels derived from nuclear energy to be able to be treated as a renewable transport fuel for the purposes of renewable transport fuel orders, as described in Chapter 5 of Part 2 of the Energy Act 2004.

451 This section also defines the terms 'recycled carbon fuel' and 'nuclear-derived fuel'.

Section 158: Revenue certainty scheme for sustainable aviation fuel producers: consultation and report

452 Section 158 requires the government to carry out a public consultation about how to design and implement a revenue certainty scheme for sustainable aviation fuel producers. The section requires that the consultation is launched within 6 months of royal assent and that the Secretary of State lay a report on progress within 18 months.

Section 159: Renewable liquid heating fuel obligations

453 Section 159 enables the Secretary of State to make regulations imposing on off gas grid heating fuel suppliers an obligation in respect of renewable liquid heating fuel that corresponds to the renewable transport fuel obligation (RTFO) provided for in the Energy Act 2004. The RTFO obligates specified suppliers of relevant transport fuels to produce evidence showing that within a specified period a specified amount of renewable transport fuel was supplied within the UK.

454 Accordingly, the obligation provided for under this section would require specified off-gas-grid heating fuel suppliers to produce evidence that within a specified period a specified amount of renewable liquid heating fuel was supplied within the UK (the "Renewable Liquid Heating Fuel Obligation" or "RLHFO"). The section would allow the required amount of fuel to be supplied either by the obligated supplier directly, or (wholly or partly) by other suppliers.

455 Subsection (2) provides that the regulations can make provision connected with the RLHFO which corresponds to provision made by, or that may be made under, Chapter 5 of Part 2 of the Energy Act 2004 (which provides for the RTFO). This enables the regulations made under this section to provide for operational arrangements relating to the administration and enforcement of the RLHFO.

456 Subsection (3) requires that the Secretary of State must consult such persons as the Secretary of State considers appropriate before making regulations under this section.

457 Subsection (4) states that the power to make regulations under this section is subject to the affirmative resolution procedure.

Section 160: Climate Change Act 2008: meaning of "UK removals"

458 Section 160 amends the Climate Change Act 2008 to expand the types of greenhouse gas removals (GGR) which count towards UK carbon budgets. The scope will be expanded beyond solely GGR removal processes methods based in the land-use sectors to include a broader range, including 'engineered' methods such as Direct Air Carbon Capture and Storage (DACCS) and Bioenergy with Carbon Capture and Storage (BECCS).

Part 5: Independent System Operator and Planner

Section 161: The Independent System Operator and Planner ("the ISOP")

459 Section 161 introduces the concept of the ISOP and describes what it will do. It includes (in subsection (3)) a representative, but not exhaustive, list of its initial functions (activities) and notes (subsection (2) that functions are (or will be) typically conferred on the ISOP by legislation (including this Act) or instruments made under legislation (for example licences or codes).

460 The ISOP has hitherto been referred to in consultation and other documentation as the Future System Operator (FSO).

Section 162: Designation etc

461 Section 162 empowers the Secretary of State to designate a person (likely a company) by notice as the ISOP and sets out that a notice designating a person as the ISOP must state when it comes into effect. The Secretary of State must ensure that, once the first ISOP has been designated, there is always one (and only one) person designated as the ISOP at any given time. This section also empowers the Secretary of State to revoke the ISOP designation by notice (again, stating when the notice comes into effect). The Secretary of State must publish any designation or revocation notice.

Section 163: Duty to promote particular objectives

462 Section 163 sets out the ISOP's main objectives. Three objectives are listed and the ISOP is required to carry out its functions in a way it considers will best achieve those objectives.

463 In the Climate Change Act 2008 a duty is imposed on the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline ('net zero'). The Secretary of State also has a duty under this Act to ensure that the net UK carbon account for a budgetary period does not exceed the carbon budget. The 'net-zero objective' in this Act imposes a duty on the ISOP to carry out its functions in a way that it considers is best calculated to promote the net zero objective, by enabling the Secretary of State to meet net zero and to not exceed the carbon budgets. While not directly building renewable energy generation assets or making final decisions on future generation mixes, the ISOP is expected during the course of operating, planning and coordinating the system to drive net zero outcomes by proactively identifying and creating opportunities to facilitate the transition.

464 The 'security of supply' objective imposes a duty on the ISOP to carry out its functions in a way that it considers best calculated to ensure the security of supply of electricity and gas to existing and future consumers. Security of supply refers to supply meeting demand and the maintaining of resilience in the system. This duty could cover putting in place and maintaining electricity system restoration plans and arrangements if security of supply is compromised. This responsibility could also involve seeking continuity of electricity to end users, through maintaining physical and cyber resilient systems, and ensuring sufficient electricity capacity to meet demand.

465 The 'efficiency and economy' objective imposes a duty on the ISOP to carry out its functions in a way that it considers best calculated to promote a coordinated electricity and gas system that operates efficiently and economically. This objective must also be applied by the ISOP with regard to the activities carried out by those engaged in those 'relevant activities' defined in subsections (5) a, b and ba.

466 Subsections (5), (6) and (7) define 'relevant activity' in a way that, broadly speaking, includes any activity that is licensable under the Electricity Act 1989 or Gas Act 1986, or any other business activity in the energy supply chain. Examples might include the production of hydrogen, the

supply of heat, CCUS or other activities designed to reduce energy sector greenhouse gas emissions, or the provision of energy-related metering and data services but not including non-electricity or gas connected uses of hydrocarbons (e.g., in petrochemicals). Consumers passively consuming energy are not caught by this definition.

467 Although some of the ISOP's functions may be more focused on matters relating to one or other of these three objectives, the ISOP will need to have regard to all of them wherever they are relevant – if necessary, making appropriate trade-offs where they may conflict. The balance of trade offs will be for the ISOP to determine, although it must have regard to the priorities in the Strategic Policy Statement for energy once this is designated for the ISOP (see further Section 165).

Section 164: Duty to have regard to particular matters

468 Alongside the objectives set in the previous section, the ISOP, when carrying out its functions must have regard to the need to facilitate competition and the desirability of facilitating innovation in relation to relevant activities and to the consumer and whole system impacts of relevant activities (as defined in the previous section).

469 As regards consumer impacts, the ISOP have regard to both to how they are affected (or are likely to be affected) by the behaviour of those engaged in relevant activities and to the impact of consumers behaviour on the carrying out of relevant activities.

470 The ISOP will take a whole-system approach to coordinating and planning Great Britain's energy system, looking across electricity, gas and other emerging markets such as hydrogen and carbon capture usage and storage. As the system develops, each relevant activity can interact with each other relevant activity, and related consumer behaviour: the ISOP is required to have regard to these interactions.

471 The intention is for the ISOP to be alive to the possibilities of new and better ways of doing things, and, working with industry, to facilitate innovation. Examples could include the better collection and use of data, and various digital technologies, to improve consumer experience and outcomes.

Section 165: Duty to have regard to strategy and policy statement

472 The Government has the power, in the Energy Act 2013, to designate a Strategy and Policy Statement (SPS). Section 165 imposes a duty on the ISOP to have regard to this SPS as defined in subsection (4). An SPS is a statement prepared and designated by the Secretary of State that sets out strategic priorities and policy outcomes of the Government’s energy policy as well as the roles and responsibilities of those who are involved in implementing that policy. The SPS provides a steer to the ISOP at a strategic level, whilst maintaining day-to-day operational independence.

473 The ISOP must notify the Secretary of State if, at any point, it thinks that a policy outcome in the SPS will not be met. The notice must include the reasons behind the conclusion and any steps the ISOP is or might take to deliver the policy outcome.

474 Subsection (5) to subsection (11) amend Part 5 (SPS) of the Energy Act 2013 to reflect the existence of the ISOP and allow the Secretary of State to review the SPS in connection with the designation of the ISOP.

Section 166: Licensing of electricity system operator activity

475 The Gas Act 1986 and The Electricity Act 1989 prohibit certain activities unless the person carrying on that activity is licensed, exempt from the requirement for a licence, or eligible (under the Gas Act 1986 only) for an exception to the prohibition on unlicensed activities.

476 There is a set of standard licence conditions for most licensable activities. Licensees are obliged to comply with the licence conditions for their type of licence from the day the licence is granted. This section makes amendments to the Electricity Act 1989 to:

a. Define the new 'electricity system operation' licensable activities. The definition is closely based on the 'system operation' aspects of transmission as currently defined in s.4(4) Electricity Act 1989, since the ISOP's initial electricity functions will be essentially those currently carried out by National Grid Electricity System Operator.

b. Create the new 'electricity system operator licence' and empower the Secretary of State to grant the first licence.

c. Ensure that the holder of the 'electricity system operator licence' also holds the 'gas system planner licence'.

d. Ensure that if a person ceases to hold the 'gas system planner' licence it ceases to hold the 'system operator' electricity licence.

Section 167: Direction for transmission licence to have effect as electricity system operator licence

477 Section 167 empowers the Secretary of State to direct that an existing transmission licence becomes the ISOP's electricity system operator licence. This would be an alternative to revoking the existing licence and granting a completely new electricity system operator licence. The Secretary of State is empowered to make appropriate modifications to the existing licence when making such a direction. The direction must be published.

Section 168: Licensing of gas system planning activity

478 Section 168 makes amendments to the Gas Act 1986 that mirror the electricity licence in section 166 but in respect of a 'gas system planner licence'. The Act provides for the ISOP to have a narrower role to gas than in relation to electricity. In relation to gas, its functions do not include day-to-day system operation or short-term planning. Instead, its functions are limited to longer-term planning and forecasting in relation to the gas network and markets (comprising a relatively small part of the current functions of National Grid Gas).

Section 169: Modification of licences etc

479 Section 169 empowers the Secretary of State or Ofgem to make changes to licences and codes and revoke licences in preparation for or in relation to the designation of the ISOP. This power expires three years after the first designation of the ISOP.

480 Subsection (4) extends this power to allow for licence or code modifications made in relation to a code body, in this case Elexon.

Section 170: Procedure relating to modifications under section 169

481 Section 170 sets out procedural rules for making licence modifications under the power in section 169. These include a requirement that before making a modification to licences or codes, the Secretary of State or Ofgem must publish a notice explaining the reasons for the changes, the proposed modifications and when they will take effect. They must also notify the persons listed in this section and consider any representations made within the specified period in the notice or before the changes take effect.

Section 171: Provision of advice, analysis or information

482 Section 171 imposes a duty on the ISOP to provide advice, analysis or information requested by the Government or Ofgem. The ISOP is required to comply with requests as and when requested, so far as reasonably practicable.

Section 172: Power to require information from regulated persons etc

483 Section 172 empowers the ISOP to request information to help it fulfil its functions. Information can be requested from those engaged in, or whom the ISOP reasonably considers intend to engage in, relevant activities (as defined in 163(5)). The request must be responded to, as far as practicable, in the time, form and manner specified in the notice by the ISOP.

484 The requirement to provide information is enforceable either by Ofgem (where the request is made to a person who is otherwise subject to Ofgem enforcement action under the Electricity Act 1989 or Gas Act 1986), or by the ISOP in civil proceedings.

Section 173: Duty to keep developments in energy sector under review

485 Section 173 imposes a duty on the ISOP to monitor and review developments that may be relevant to the delivery of its functions. This could include, for example, technological changes, government policies or market shifts.

Section 174: Transfers

486 Section 174 introduces Schedule 9, which sets out the Secretary of State's power to make transfer schemes in connection with the designation of a person as the ISOP and connected provisions.

Section 175: Pension arrangements

487 Section 175 introduces Schedule 10, which creates the powers to make arrangements regarding pensions in connection with the establishment of the ISOP.

Section 176: Financial assistance for the ISOP

488 Section 176 grants the Secretary of State the power to provide financial assistance to the ISOP, and (where the Secretary of State considers this appropriate) to set conditions which this financial assistance is subject to. Subsection (2) provides an indicative list of the types of financial assistance that may be provided.

Section 177: Cross-sectoral funding

489 The ISOP will operate across both the electricity and gas sectors and this section facilitates that work by allowing cross-sectoral funding.

490 Currently the Electricity Act 1989 and Gas Act 1986 limit the extent to which the holders of a licence granted under one of these Acts can consider the interests of consumers of a holder of licences under the other Act.

491 This section removes the barriers in section 7 of the 1989 Act and section 7B of the 1986 Act, so as to allow payments raised from licence holders in one sector to be paid to those in another as long as there is a benefit, or at least no detriment, to consumers in the first sector. The removal of these barriers will enable the ISOP to coordinate and ensure strategic planning across the energy sector more effectively.

492 The section introduces a provision, in section 9 of each Act, to expand licence holders' statutory duties and require them to have regard to the interests of consumers of the other energy sector where directed by their licence. Similar provision is not required for Ofgem who are already given in each Act discretion to have regard to the consumers of the other sector.

Section 178: Principal objective and general duties of Secretary of State and GEMA under Part 5

493 Section 178 ensures that when carrying out various functions in relation to the ISOP, the Secretary of State and Ofgem, must have regard to the principal objective and general duties, as defined in the Electricity Act 1989 and Gas Act 1986. The principal objective of the Secretary of State and Ofgem can be characterised as protecting the interests of existing and future electricity and gas consumers. General duties include promoting effective competition in the energy sector, having regard to security of supply and securing a healthy energy market.

494 This practice has precedents in earlier energy legislation where new functions are given to the Secretary of State or Ofgem in relation to electricity or gas that would not otherwise be subject to the principal objective and general duties (e.g., s.190 Energy Act 2004, s.102 Energy Act 2008, s.22(9) and (10) Energy Act 2011, s.39 and 53 Energy Act 2013, s.6(12) and (13) Smart Meters Act 2018).

495 Subsection (1) states that the Secretary of State must have regard to the above principal objective and general duties, when carrying-out new functions relating to the power to designate, revoke and order that an existing transmission licence becomes the ISOP's electricity system operator licence.

496 Subsections (2) and (3) extends the requirement to have regard to the principal objective and general duties to the power of making changes to licences and codes and revoking licences in preparation for or in relation to the designation of the ISOP, conditions to make these modifications and Ofgem's enforcement functions in relation to information requests to regulated persons.

Section 179: Minor and consequential amendments

497 Section 179 introduces Schedule 11, which makes minor and consequential amendments to other acts.

Section 180: Interpretation of Part 5

498 Section 180 provides the meaning and definitions of various terms used in Part 5.

Section 181: Regulations under Part 5

499 Section 181 states that the powers to make regulations under the Act are exercisable by statutory instrument.

Part 6: Governance of Gas and Electricity Industry Codes

Section 182: Designation of codes etc

500 Section 182 defines the term 'designated document' and empowers the Secretary of State to create and amend lists of designated documents. The term 'designated document' is meant to refer to the energy codes and engineering standards that are within the scope of this new governance framework, which is where the detailed rules of the electricity and gas systems are set out. These rules cover everything from how buyers and sellers must interact in commercial markets to the technical specifications required to connect to relevant networks.

501 The ability for the Secretary of State to create and amend lists of designated documents is necessary because there is no universal definition of what should be considered a 'designated document'. The total number of designated documents may also vary over time.

Section 183: Meaning of "code manager" and "code manager licence"

502 A 'code manager' will be required to hold a 'code manager licence' granted by the GEMA before it is able to perform its code management function. This section defines what is meant by both of these terms.

Section 184: Designation of central systems

503 A 'designated central system' is an IT system connected with the maintenance, operation, or data storage of a designated document. Each one of these systems has a 'responsible body' who is responsible for operating, or procuring the operation of, these systems.

504 This section empowers the Secretary of State to create lists of designated central systems and responsible bodies, which will be used to identify which systems and bodies fall within the scope of these reforms. It also establishes a process so that these lists can be amended over time, such as when a new system is created or the identity of a responsible body changes.

Section 185: Licence under Gas Act 1986 for performance of code management function

505 Section 185 grants the GEMA the power to licence one or more code managers, each of which will be responsible for making arrangements for the governance of their respective code(s). These licences will be held under the same framework as other licences that the GEMA is able to grant under the Gas Act 1986. Any licences for dual-fuel codes will be granted simultaneously under both Acts.

506 This section also establishes 'code management' as a prohibited activity, making it illegal to perform that activity without an appropriate licence. This section, as compared to the equivalent drafting establishing the code management prohibition under the Electricity Act 1989, contains additional drafting to accommodate the licence framework that is presently in place for gas shippers.

Section 186: Licence under Electricity Act 1989 for performance of code management function

507 Section 186 grants the GEMA the power to licence one or more code managers, each of which will be responsible for making arrangements for the governance of their respective code(s). These licences will be held under the same framework as other licences that the GEMA is able to grant under the Electricity Act 1989. Any licences for dual-fuel codes will be granted simultaneously under both Acts.

508 This section also establishes 'code management' as a prohibited activity, making it illegal to perform that activity without an appropriate licence.

Section 187: Selection of code manager

509 Section 187 sets out the two ways that the GEMA will be able to select code managers: on a non-competitive basis or on a competitive basis, via tender. It also empowers the Secretary of State to create regulations that will guide the GEMA's decision on which selection route to take in each case.

Section 188: Selection on a non-competitive basis

510 Section 188 empowers the Secretary of State to draft regulations that set out the related processes, conditions or restrictions that the GEMA would apply when selecting code managers on a non-competitive basis. In practice, this would mean the GEMA directly appointing a code manager

without the requirement for a competitive tender.

Section 189: Selection on a competitive basis

511 Section 189 empowers the GEMA to draft regulations that set out the processes and conditions by which it would select code managers on a competitive basis.

Section 190: Strategic direction statement

512 Section 190 places a duty on the GEMA to publish a document each year that describes how it thinks the codes will or may need to change to reflect policies and other developments in the energy sector. It also sets out the processes that must be followed before publishing this document. Once published, the strategic direction set out in this document will be used by individual code managers to develop their code changes delivery plans for the next year.

513 When writing this document, the GEMA will need to consider any advice provided by the Independent System Operator and Planner and any relevant developments in the energy sector. More detailed considerations may also be set out in regulations made by the Secretary of State.

Section 191: Transfer of functions under section 190 to Independent System Operator and Planner

514 The Act places a duty on the GEMA to publish a strategic direction statement each year. However, given its role the Independent System Operator and Planner (ISOP) may be better suited to take on this role in future. This section sets out a process that would allow the Secretary of State to permanently transfer the GEMA's duty to publish a strategic direction to the ISOP.

Section 192: Modification of designated documents by the GEMA

515 Section 192 grants the GEMA the power to change designated documents directly under a limited range of circumstances, without the need to submit changes for consideration via the code manager-led change process. These circumstances include where the change is urgent; where the interests of the relevant code manager are likely to prejudice the change; where the change is for the purposes of implementing the strategic direction and is particularly complex; where the change is related to code consolidation; or where the change is required as a consequence of changes made by the GEMA to another document. It also empowers the Secretary of State to draft regulations that set out further detail regarding how and when this power can be used.

Section 193: Modification under section 192

516 Section 193 describes the processes that the GEMA must follow when using its power to directly modify designated documents, such as who must be consulted or informed. This section also establishes a veto power for the Secretary of State, which will allow them to direct the GEMA not to make a proposed modification to a designated document.

Section 194: Directions relating to designated central systems

517 Section 194 gives the GEMA the power to issue directions to the bodies that are responsible for operating, or procuring the operation of, the critical IT systems that underpin the energy system. This power is primarily intended to allow the GEMA to ensure that these bodies do what they are required to do by the codes. In addition, it will also allow the GEMA to issue directions that are reasonably necessary for the efficient operation of the code, such as a direction to help a code manager develop a specific code change proposal.

Section 195: Directions under section 194

518 Section 195 details the process and considerations that the GEMA must follow when it wants to give a direction to the responsible body for a central system, including who must be consulted or informed.

Section 196: Principal objective and general duties of Secretary of State and GEMA under Part 6

519 Section 196 states that the new powers and functions being conferred on the Secretary of State and the GEMA by this Part will be subject to the relevant principal objectives and general duties listed in the Gas Act 1986 and the Electricity Act 1989. These obligations of the Secretary of State and the GEMA include a requirement to carry out their respective functions in a way that protects the interests of existing and future consumers.

Section 197: GEMA's annual report to cover matters relating to designated documents

520 The GEMA is already required to publish an annual report each year. This section updates the GEMA's existing reporting requirements so that it also needs to include a general overview of developments related to codes, as well as an overview of code-related decisions that it has made over the past year.

Section 198: Regulations under Part 6

521 Section 198 explains the legal procedures that will be used when creating the regulations mentioned elsewhere in this Part and when seeking approval for these regulations from Parliament. In all but one case, these regulations will be subject to the negative procedure, whereby there is no automatic parliamentary debate on them. Regulations related to the transfer of the GEMA's duty to publish a strategic direction statement to the ISOP will be subject to the more active form of parliamentary scrutiny through the affirmative procedure. Since the transfer will be a permanent one and would represent a significant change within the energy system, Parliament will be required to actively scrutinise and debate exercise of the power.

Section 199: Interpretation of Part 6

522 This provision is self-explanatory.

Section 200: Transitional provision and pension arrangements

523 This provision is self-explanatory.

Section 201: Minor and consequential amendments

524 This provision is self-explanatory.

Part 7: Market Reform and Consumer Protection

Section 202: Principal objectives of Secretary of State and GEMA

525 Section 202 amends the existing duties of the Gas and Electricity Markets Authority (GEMA) (the governing body of Ofgem) by including reference to the net zero targets in the Climate Change Act 2008. This will require the regulator to consider how their decisions may assist the Secretary of State in meeting the government's net zero targets.

Section 203: Competitive tenders for electricity projects

526 This provision is self-explanatory.

Section 204: Mergers of energy network enterprises

527 This provision is self-explanatory.

Section 205: Licence required for operation of multi-purpose interconnector

528 Participating in the operation of a multi-purpose interconnector cannot easily be licensed at present as it is not currently addressed in the Electricity Act 1989. This section amends the Electricity Act 1989 to ensure that a person who operates a multi-purpose interconnector will be required to hold a licence or an exemption. A definition of 'multi-purpose interconnector' is introduced into Section 4 of the Electricity Act 1989 (by way of a new subsection (3EA)), alongside a description of what it means to participate in the operation of a multi-purpose interconnector (by way of a new subsection (3CA)). The amendments also, as a consequence of amending Section 4(1) of the Electricity Act 1989, make unauthorised participation in the operation of a multi-purpose interconnector a prohibited activity. The wording of new subsection (3CA) of section 4 ensures that persons already holding an interconnector or offshore transmission licence are not caught by that prohibition. In addition, the new definition of a multi-purpose interconnector covers the range of technologies involved in their operation. For example, new subsection (3EA)(b)(ii) describes conveyance "between a generating station and a substation" which also captures an MPI which includes multiple generating stations and/or substations (including demand stations).

529 By way of a new subsection (2AA) of section 6 of the Electricity Act 1989, the holder of an MPI licence may not also be a holder of a licence falling within paragraphs (a) to (e) of section 6(1) of the Electricity Act 1989. This ensures a level of separation between licence holders that will enable GEMA to properly regulate licensed activities.

530 The exact operational requirements and level of business separation required between holders of MPI licences and holders of different licence types will be determined by GEMA.

531 The intention of this section is not to create a stricter separation between licence holders than is necessary for regulatory purposes. In particular, the intention is not to impose strict business separation between MPI licence holders and interconnector licence holders.

Section 206: Standard conditions for MPI licences

532 Section 206 sets out the procedures for determining the standard licence conditions for multi-purpose interconnectors. The procedures are in line with those for existing licences. After the commencement of subsection (6), the Secretary of State will have no further role in relation to the standard licence conditions although he or she may veto proposals made by GEMA to modify the standard licence conditions either on the grant of a licence or subsequently.

Section 207: Operation of multi-purpose interconnectors: independence

533 Section 207 amends the Electricity Act 1989 to ensure that any person who participates in the operation of a multi-purpose interconnector is certified by Ofgem to be independent in relation to generation and supply activities, in order to be able to hold an MPI licence.

Section 208: Grant of MPI licences to existing operators

534 Section 208 gives the Secretary of State the power under section 6 of the Electricity Act 1989 to issue a multi-purpose interconnector licence to a person operating under an electricity interconnector or offshore transmission licence when the prohibition enters into force.

Section 209: Power to make consequential etc provision

535 Section 209 confers a regulation making power on the Secretary of State to make further consequential amendments which may arise because of the sections which relate to multi-purpose

interconnectors. Regulations that make consequential provision may amend, repeal, or revoke an enactment.

Section 210: Consequential amendments relating to multi-purpose interconnectors

536 This provision is self-explanatory.

Section 211: Electricity support payments for energy-intensive industries

537 The powers in this section will be used to make regulations creating the proposed Network Charging Compensation Scheme, to provide some relief on the network charging costs paid by energy-intensive industries.

538 Subsection (1) enables the secretary of State to make regulations to provide electricity support payments to those who carry out an energy-intensive activity, for the purpose of alleviating the impact of electricity costs.

539 Subsection (2) allows "energy-intensive activity" to be defined in regulations.

540 Subsection (3) sets out a number of specific provisions which may be included in such regulations, including around determining eligibility, the corresponding application process, information sharing, enforcement of obligations and dispute resolution.

541 Subsection (4) requires that, where such regulations provide for enforcement through a fine, they must also provide for a right of appeal.

542 Subsections (5) and (8) between them make provision for regulations to determine the appointment, functions, remuneration and termination of an administrator for the payment scheme, including that such a person cannot be appointed without their consent.

543 Subsection (6) allows that where the administrator is the Gas and Electricity Markets Authority ("GEMA"), such regulations may make provision for GEMA to enforce obligations under the scheme against regulated persons (defined in section 25(8) of the Electricity Act 1989) as if they were "relevant requirements" for the purposes of the Electricity Act 1989.

544 Subsection (7) allows for payments owed under these regulations to be enforced as a civil debt.

545 Subsection (9) allows regulations to make provision for the transition from one administrator to another, allowing continuation of the functions of the administrator if there is a change in the identity of that person.

546 Subsection (10) clarifies that the regulations may confer a discretion on the administrator or the Secretary of State.

547 Subsection (11) requires that such regulations must be made subject to the affirmative procedure.

Section 212: Levy to fund electricity support payments

548 This section makes provision allowing for the funding of the payments and scheme provided for in section 211, including the appointment and role of an administrator (which may or may not be the same administrator as is appointed under section 211).

549 Subsection (1) enables the Secretary of State to make regulations requiring levy payments from electricity suppliers for purpose of funding both the electricity support payments in section 211 and any other costs arising out of that provision. This includes the costs of the administration of the levy as well as the support payment scheme and might include, for example, the funding of administrative and enforcement costs.

550 Subsection (2) sets out a number of specific provisions which may be included in such regulations, including around determining the levy rate to be applied to individual suppliers, establishing the process by which the levy is paid by suppliers, providing for the sharing of information, enforcement and dispute resolution.

551 Subsection (3) requires that, where such regulations provide for enforcement through a fine, they must also provide for a right of appeal.

552 Subsections (4) and (7) between them make provision for regulations to determine the appointment, functions, remuneration and termination of an administrator for the levy, including that such a person cannot be appointed without their consent.

553 Subsection (5) allows that where the administrator is the Gas and Electricity Markets Authority ("GEMA"), such regulations may make provision for GEMA to enforce obligations under the scheme against regulated persons (defined in section 25(8) of the Electricity Act 1989) as if they were "relevant requirements" for the purposes of the Electricity Act 1989.

554 Subsection (6) allows for payments owed under these regulations to be enforced as a civil debt.

555 Subsection (8) allows regulations to make provision for the transition from one administrator to another, allowing continuation of the functions of the administrator if there is a change in the identity of that person.

556 Subsection (9) clarifies that the regulations may confer a discretion on the levy administrator or the Secretary of State.

557 Subsection (10) requires that such regulations must be made subject to the affirmative procedure.

558 Subsection (11) defines "electricity supplier" by reference to section 6(1)(d) of the Electricity Act 1989.

Section 213: Electricity storage

559 Section 213 amends the Electricity Act 1989 to clarify that electricity storage is a distinct subset of generation and defines the storage as energy that was converted from electricity and is stored for the purpose of its future reconversion into electricity.

560 A non-exhaustive list of technologies that are considered electricity storage includes electro-chemical batteries; gravity energy storage systems; air-based storage systems; kinetic energy storage systems; thermal storage where the stored chemical energy is then converted back into electricity.

561 The definition does not include the following:

a. Systems which convert electricity to another energy vector and back to electricity, where the other energy vector is not stored within a closed system. For example, power to gas to power systems which do not reconvert into electricity the same energy as was converted from it. This is because it is not the same energy being reconverted to electricity.

b. Systems which store energy that has been converted from electricity, but that energy is not then reconverted back to electricity. For example, thermal systems where the stored energy is used directly as heat. This technology lacks the key final stage of reconversion to electricity, meaning that it does not act as a temporary store with respect to the electricity system.

c. Industrial processes powered by electricity whereby the reconversion of potential energy into electricity is a by-product of another process. This is because such processes are not used to perform storage on the electricity system as the term is properly understood.

d. Network equipment whose primary function is not energy storage on the power electricity system. For example, capacitors and supercapacitors (where used as circuit impedance components), transformers and inductors are licensable as equipment or apparatus that are used for, or for purposes connected with, the transmission or distribution of electricity, rather than its generation. This is because they are not used to perform storage on the electricity system as the term is properly understood.

Section 214: Payment as alternative to complying with certain energy company obligations

562 Section 214 grants the Secretary of State the power to introduce a buy-out mechanism under the Energy Company Obligation (ECO) scheme.

563 This allows the Secretary of State powers to include provisions in the secondary legislation for the ECO scheme that gives suppliers the option to meet their obligations by making a payment to an approved third party, for an approved purpose.

564 The section also provides powers that enable the Secretary of State to make provisions on the amount of payment and the determination of the approved third parties and approved purposes.

Section 215: Smart meters: extension of time for exercise of powers

565 Subsection (1) amends section 88(5) of the Energy Act 2008 to extend until 1 November 2028 the period within which the Secretary of State can exercise the power under section 88(1). Section 88(1) provides for the Secretary of State to modify conditions of licences, and documents maintained in accordance with licence conditions (and agreements giving effect to such documents), for example industry codes.

566 Subsections (2)(a) and (3)(a) amend section 8AA(10D) of the Gas Act 1986 and section 7A(10D) of the Electricity Act 1989 to extend to 1 November 2028 the expiry date for the provisions allowing for the Secretary of State to veto a proposed transfer of the smart meter communication licences.

567 Subsections (2)(b) and (3)(b) amend section 41HB(2) of the Gas Act 1986 and section 56FB(2) of the Electricity Act 1989 to extend until 1 November 2028 the period within which the Secretary of State can exercise the power to provide for activities connected with smart meters to be licensable activities. Licensable activities are those determined in legislation to be prohibited to undertake without being the holder of a licence or without an exemption from the requirement to hold a licence.

568 Subsections (4) to (6) deal with transitional issues that arise if this section comes into force after 1 November 2023.

569 Subsection (7) makes consequential repeals.

Part 8: Heat Networks

Chapter 1: Regulation of Heat Networks

Section 216: Relevant heat network

570 Section 216 clarifies the scope of regulation by defining "relevant heat network", a term used for the purpose of the powers to make secondary legislation detailed in Schedule 18. The definition of "relevant heat network" relies on definitions of "communal heat network", "district heat network", and "heat network" in subsection (2) (and subsection (3) clarifies that ambient loops, that do not have a single heat source, are within the definition of "district heat networks").

Subsection (4) permits the Secretary of State to amend these definitions by regulations subject to the affirmative procedure.

Section 217: The Regulator

571 Section 217 provides that GEMA will be the regulator for heat networks in England, Wales and Scotland. The Secretary of State may introduce regulations to appoint a different regulator by affirmative procedure. The regulator in Northern Ireland will be the Northern Ireland Authority for Utility Regulation (NIAUR) subject to a similar power to make changes by secondary legislation.

Section 218: Alternative dispute resolution for consumer disputes

572 Section 218 provides for consequential amendments to the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015. Specifically, it provides the Department for the Economy in Northern Ireland with powers to designate its heat networks regulator as a competent authority with responsibility for approving Alternative Dispute Resolution bodies in Northern Ireland (GEMA is already designated as a competent authority for this purpose).

Section 219: Heat networks regulations

573 Section 219 provides powers for the Secretary of State to make secondary legislation to regulate heat networks in Great Britain and confer powers relating to the development and maintenance of heat networks in Great Britain. It also provides the Department for the Economy in Northern Ireland with powers to make secondary legislation to regulate heat networks in Northern Ireland and confers powers relating to the development and maintenance of heat networks in Northern Ireland. Further details on what these regulations may provide for are set out in Schedule 18. The section requires the Secretary of State and the Department for the Economy in Northern Ireland to consult with relevant parties before making regulations.

Section 220: Regulations made by Secretary of State: consultation with devolved authorities

574 Section 220 sets out specific steps the Secretary of State must take when making regulations under the previous section containing provision within Scottish or Welsh devolved competence. The steps include consultation for a minimum period and a duty (if requested) to explain whether and how representations made by the Scottish or Welsh Ministers have been taken into account. The procedure only applies in cases where regulations are made by virtue of Parts of Schedule 18 whose subject matter is considered to be partly devolved.

Section 221: Heat networks regulations: other provision about procedure

575 Section 221 sets out the procedure for making regulations described in section 219. They are to be made by statutory instrument and the section specifies whether they are to be made by negative or affirmative procedure. For example, a statutory instrument is subject to the affirmative procedure if it is the first of the regulations to be made under this power or if it amends primary legislation.

Section 222: Recovery of costs by GEMA and NIAUR

576 Section 222 allows for fees paid by electricity and gas licensees to contribute towards costs relating to heat networks. This includes costs incurred by:

- GEMA, or NIAUR in the case of Northern Ireland, in their roles as heat network regulators,

- other parties carrying out functions of the regulator,
- the Secretary of State, or the Department for the Economy in Northern Ireland, in relation to the special administration regime,
- parties providing consumer advocacy and advice.

Section 223: Heat networks: licensing authority in Scotland

577 Section 223 provides that the Secretary of State may by regulations appoint GEMA as the licensing authority under the Heat Networks (Scotland) Act 2021. It sets out amendments to that Act which will allow for the appointment to be made through regulations.

Section 224: Heat networks: enforcement in Scotland

578 Section 224 provides that the Secretary of State may (by regulations) give the licensing authority described in section 223 above the same enforcement powers as those being provided to the heat networks regulator through regulations. However, the Secretary of State may only exercise this power while GEMA is the licensing authority.

Section 225: Interpretation of Chapter 1

579 Section 225 defines certain terms used in these sections.

Chapter 2: Heat Network Zones

Section 226: Regulations about heat network zones

580 Section 226 provides powers for the Secretary of State to make regulations about heat network zones (“zones regulations”) and describes what a heat network zone is. The section also describes the scope of the regulations and the Parliamentary procedure to be followed.

Section 227: Heat Network Zones Authority

581 Section 227 provides that zones regulations may make provision for an “Authority” to be established, with responsibility for general functions in relation to heat network zones. The section allows for the Secretary of State, or another person, to be designated as the Authority. The Authority may also delegate its functions to other persons specified in the regulations.

Section 228: Zone coordinators

582 Section 228 provides that zone regulations may make provision about zone coordinators, including regarding their governance and funding. The regulations may specify how zone coordinators can be established by local authorities acting alone or collaboratively. The section also provides powers for regulations to be made which permit the Authority to perform the functions of a zone coordinator or to direct a zone coordinator to perform any of its functions. The Authority may also require local authorities to designate a zone coordinator or designate a zone coordinator where a local authority fails to do so.

583 This subsection (5) defines what "local authority" means in the section.

Section 229: Identification, designation and review of zones

584 Section 229 provides that zones regulations may make provision for the Authority and zone coordinators to identify zones, in accordance with the zoning methodology, and for zone coordinators or the Authority to designate such zones. Regulations may also make provision for zone coordinators or the Authority to undertake reviews of designation decisions.

585 In particular, the section provides that zones regulations may make provision regarding the procedure for the designation of areas as zones by zone coordinators or the Authority.

586 The section also provides powers for regulations enabling zone coordinators or the Authority to revoke, vary and review designations subject to criteria and conditions.

Section 230: Zoning methodology

587 Section 230 provides that zones regulations may make provision for a methodology which the Authority and zone coordinators must follow when identifying areas as heat network zones.

588 Zones regulations may also make provision for the Authority to issue guidance relating to the methodology, as well as for the Secretary of State to carry out reviews of the methodology.

Section 231: Requests for information in connection with section 229 or 230

589 Section 231 provides that zones regulations may make provision for the Authority and zone coordinators to request information in connection with their functions under sections 229 (Identification, designation and review of zones) and 230 (Zoning methodology).

590 The regulations may provide powers for the Authority and zone coordinator to issue notices and impose penalties for non-compliance with requests, as well as making provision to ensure that information requests do not require the breach of data protection legislation or obligations of confidence.

591 This section also makes provision for zones regulations to provide that zone coordinators may delegate their information requests powers to others, with the regulations to specify the circumstances in which this may be done and any conditions which apply.

Section 232: Heat networks within zones

592 Section 232 makes provision for certain types of buildings and heat sources within heat network zones to be required to connect to district heat networks in circumstances and within timeframes to be set out in regulations. The section also provides for regulations to make provision for zone coordinators to provide prior notice of requirements.

593 In relation to buildings which are required to connect, the regulations may provide for exemptions to be granted subject to specified criteria and provide a route for challenging decisions where an exemption request is refused.

594 In relation to heat sources, the zones regulations may provide that zone coordinators may request information from heat sources and the relevant procedures that are to apply. Regulations may also make provision about the terms on which heat is to be supplied to a heat network, including about the amount that may be charged.

595 The section also provides that regulations may allow zone coordinators to set emissions limits on heat networks in zones, subject to the consent of the Authority. A grace period may be applied before this requirement takes effect and regulations may specify when this should apply, including the procedure and notice period to be followed, and route for legal challenge when a grace period is refused. The Authority may also issue guidance in relation to grace periods.

596 The section also sets out the definition of "emissions" and "targeted greenhouse gas", in the context of the emissions limit provision.

Section 233: Delivery of district heat networks within zones

597 Section 233 provides that zones regulations may make provision for the delivery of district heat networks by zone coordinators within zones, including for the Authority to give advice to zone coordinators.

598 In particular, the regulations may make provision for the grant of consent from zone coordinators to be required for the development of district heat networks within zones and provide powers for zone coordinators to grant exclusive rights within a zone. Regulations may make provision for the Authority to publish the standard conditions that zone coordinators must use when granting an exclusive right. The section also provides that zones regulations may provide that, after a certain timeframe, a zone coordinator may lose the power to decide the delivery model for heat networks within a zone.

599 The section also provides for zones regulations to make provision for a zone coordinator to vary or revoke a decision made regarding the delivery of district heat networks in zones and provides for an appeal process.

Section 234: Enforcement of heat network zone requirements

600 Section 234 provides that zones regulations may make provision regarding the enforcement of heat network zone requirements, such as the requirement to connect to a district heat network or the requirement to provide information to a zone coordinator.

601 These regulations may provide for zone coordinators to issue notices requiring demonstrations of compliance within a certain period and impose certain penalties for non-compliance. Provision may also be made for the appeal of notices.

Section 235: Penalties

602 Section 235 clarifies what may be included in regulations relating to penalties issued under section 231(2)(c), relating to requests for information, and section 234(2)(c), relating to enforcement powers. This includes provisions around the maximum penalty, procedure, grounds for legal challenge, how penalties may be recovered and that sums received may be paid into the Consolidated Fund.

603 This section also allows the Authority to issue guidance in respect of the penalty-making powers described above, including in relation to how the amount of a penalty may be determined.

Section 236: Records, information and reporting

604 Section 236 provides that zones regulations may require zone coordinators to collect information which enables the identification of areas as heat network zones or supports monitoring of areas which have been designated as heat network zones. Regulations may also require zone coordinators and the Authority to maintain records of relevant information they receive including that which is by virtue of their powers to request information to fulfil their functions (section 231).

605 This section also provides that regulations may include provisions that enable or require:

- zone coordinators to provide information to other zone coordinators, the Authority or the Regulator; and
- the Authority to provide information to zone coordinators or the Regulator.

606 In each case, the section also provides that zones regulations may make provision to ensure that the sharing of information does not constitute breaches of data protection legislation or obligations of confidence.

Section 237: Interpretation of Chapter 2

607 Section 237 sets out how various terms within this Chapter are to be interpreted.

Part 9: Energy Smart Appliances and Load Control

Chapter 1: Introductory

Section 238: Energy smart appliances and load control

608 Section 238 contains the definitions for Part 9, which is concerned with Energy Smart Appliances (ESAs) and load control. Subsections (2) and (3) define an "energy smart appliance" and the related concept of "energy smart function." Subsection (4) defines "load control signal".

Chapter 2: Energy Smart Appliances

Section 239: Energy smart regulations

609 Section 239 provides the Secretary of State with the power to introduce "energy smart regulations," for ESAs in Great Britain, and to mandate they must comply with certain requirements.

610 The section provides that energy smart regulations can be made for electric vehicle charge points or energy smart appliances that are used in connection with specific purposes, namely:

- Refrigeration, e.g., fridges and freezers,
- Cleaning, e.g., washing machines, dishwashers and tumble driers,
- Battery storage e.g., home batteries,
- Electrical heating or ventilation, e.g., air and ground source heat pumps and electric storage heaters, and
- Air conditioning or ventilation.

611 Technical requirements can be imposed on these appliances, including but not limited to ensuring that they do not undermine the stability of the electricity system, can respond to energy smart related signals from any load controller (defined in Chapter 3 below), and that communications and personal data used by energy smart appliances are secure.

612 The section provides for the prohibition of the placing on the market of appliances which do not meet the requirements and provides for enforcement activities to be undertaken.

613 This section also provides the Secretary of State with the power, through regulations, to define 'relevant electronic communications network', and to amend the list of specified purposes applicable to the energy smart regulations.

614 The section sets out the economic actors to which the requirements will apply. Relevant economic actors include any person making, selling, importing or distributing energy smart appliances, or carrying out load control.

Section 240: Prohibitions and requirements: supplemental

615 Section 240 sets out that the requirements imposed by the energy smart regulations enabled by Section 239 may refer to technical standards and published documents, or a list published by the Secretary of State.

616 This section specifies that the power conferred to the Secretary of State in section 239 to prohibit relevant appliances being placed on the market is restricted to non-compliant ESAs and non-smart electric heating appliances (for example, heat pumps) and electric vehicle charge points, so that the sale of these devices without smart functionality can be prohibited in Great Britain.

617 The section specifies that enforcement action of any kind will not be taken against the end user of an ESA.

Section 241: Enforcement

618 Section 241 sets out that the energy smart regulations include provision to ensure compliance with the requirements under the regulations, including provision to designate enforcement authorities, require that relevant economic actors maintain information and monitor compliance, and a range of investigatory powers to monitor and assess non-compliance, and stop or limit the placing on the market of appliances where non-compliance has occurred. They also allow an enforcement authority to apply to a court in connection with non-compliance, and for the court to provide a remedy. This provides for the Secretary of State to make payments, or provide resources, to the enforcement authority for the purpose of enforcing the energy smart regulations.

Section 242: Sanctions, offences and recovery of costs

619 Section 242 specifies that regulations can impose a range of sanctions, including the imposition of civil penalties on economic actors for non-compliance with energy smart regulations or for providing false information. Energy smart regulations can create certain offences in relation to specific activities, such as contravening requirements, and obstructing, misleading or impersonating enforcement authorities. Offences may not be publishable with imprisonment.

620 The section also allows for the enforcement body to recover costs in relation to the energy smart regulations.

Section 243: Appeals against enforcement action

621 Section 243 provides that where an enforcement authority has imposed a requirement or civil penalty, this must include for a right of appeal to a court or tribunal. The right of appeal to a court of tribunal against a penalty can include, but is not limited to, provisions set out in subsection (2). Subsection (4) outlines the powers conferred on the court or tribunal to confirm, withdraw or vary the requirement or penalty.

Section 244: Regulations: procedure and supplemental

622 Section 244 allows for different provisions to be made for different appliances or purposes and the ability to make exemptions under these powers.

623 Subsection (3) sets out the requirement for the Secretary of State to consult before making regulations that subject an ESA to regulations or amending the list of purposes in section 239(2).

624 The section sets out that the first energy smart regulations made under these powers, any amendment to the list of purposes set out in section 239(2) for which the energy smart regulations apply, or the creation of a criminal offence would be subject to the affirmative procedure. The made affirmative procedure would also be used where energy smart regulations introduce significant changes such as bringing other appliances into scope, introducing a requirement to comply with a new standard or introducing enforcement mechanisms or penalties. Any other statutory instrument regarding the energy smart regulations is subject to the negative procedure.

Chapter 3: Licensing of Load Control

Section 245: Power to amend licence conditions etc: load control

625 This section allows the Secretary of State to amend existing special and standard licence conditions granted under Section 6(1) of the Electricity Act 1989 and 7A(1) and 7AB of the Gas Act 1986. It also allows the modification of electricity codes (i.e. a document maintained under electricity licences). It may be used to facilitate, promote or regulate remote load control of energy smart appliances, including by ensuring their security, where load control means communicating with devices to alter their electricity consumption or export. For example, modifying licences in the event a load control organisation is also a supplier to clarify the interaction between the two licences.

626 A non-prescriptive list of specific ways in which this power may be used is given. It specifies, for instance, that the provision of load control services may be prohibited in respect of certain devices (for instance those which do not meet relevant technical specifications) or may be regulated by reference to those devices (for instance by imposing requirements for the control or configuration of devices to which load control services apply).

627 This modification power can be exercised to make different provisions in relation to different classes of customer (for example domestic, small business or medium/larger businesses). The Secretary of State may also make any necessary and relevant incidental, supplementary, consequential or transitional modifications to licence conditions or documents.

628 This section states that the power to modify licence conditions cannot be exercised after a period of 10 years (beginning when the power comes into force). It also allows for the Secretary of State to extend this period by up to three years at a time, subject to the affirmative procedure.

Section 246: Power to amend licence conditions etc: procedure

629 This section provides that the Secretary of State must consult the holders of licences, the Gas and Electricity Markets Authority (GEMA) and others as appropriate, before making modifications. It also sets out the notification process which must be undertaken by the Secretary of State after making any modification.

Section 247: Load control: supplemental

630 Standard licence conditions are licence conditions that are typically incorporated into the licences of all (or a subset of) licence holders for the relevant activity - in this case load control. Any modifications made to a standard licence condition in a particular licence using these powers, does not prevent the remainder of that licence condition in that particular licence from continuing to be a standard condition (for example, for the purposes of future modification).

Section 248: Application of general duties to functions relating to load control

631 This section provides that, when exercising any of the powers under this Act to amend licences granted under the Electricity Act 1989 and Gas Act 1986, the Secretary of State is bound by the principal objective (essentially to protect the interests of electricity consumers) and general duties set out in Part 1 of each of those Acts. It also provides that modifications made to standard conditions of relevant existing licences are reflected in the sections of the Utilities Act 2000 which govern the standard conditions of those licences.

Section 249: Licensing of activities relating to load control

632 This section introduces Schedule 17, which contains amendments necessary to the Electricity Act 1989 to license activities relating to load control.

Part 10: Energy Performance of Premises

Section 250: Power to make energy performance regulations

633 This section gives the Secretary of State, Scottish Ministers and Department of Finance in Northern Ireland, the power to make regulations (energy performance regulations) to enable or require the energy usage or the energy efficiency of premises to be assessed, certified, and published and to require that improvements in energy usage or efficiency are identified and recommended.

634 The section also gives the Secretary of State, Scottish Ministers and Department of Finance in Northern Ireland, the power to make regulations to restrict or prohibit the marketing or disposal of premises where their energy performance has not been assessed, certified, or publicised. Under this section, the Secretary of State, Scottish Ministers and Department of Finance in Northern Ireland, may by regulations confer functions on any person and impose requirements or make provision for securing compliance with requirements under the regulations.

635 Regulations made under this section may also authorise, restrict or prohibit the supply or keeping of information relating to the energy performance of buildings.

636 This section will enable the Secretary of State, Scottish Ministers and Department of Finance in Northern Ireland, to amend, revoke or replace their existing energy performance of buildings regimes, which derive from EU law.

Section 251: Energy performance regulations relating to new premises

637 This section provides that the Secretary of State, Scottish Ministers and Department of Finance in Northern Ireland, may make energy performance regulations in relation to new premises.

Section 252: Sanctions

638 This section provides more detail on the enforcement provisions that may be made in energy performance regulation. The Secretary of State, Scottish Ministers and Department of Finance in Northern Ireland, may by regulations make provision including the imposition of civil penalties up to a specified maximum amount and for the creation of criminal offences and associated penalties (subject to the limitation set out in the section). Regulations made under this section must provide for a right of appeal against the imposition of a penalty.

Section 253: Regulations under Part 10

639 This section sets out the procedure to be followed in making energy performance regulation. It also states that regulations under this section may amend primary legislation and may be applied to the Crown.

Part 11: Energy Savings Opportunity Schemes

Section 254: Energy savings opportunity schemes

640 The purpose of this section is to set out powers for the establishment and operation of one or more Energy Savings Opportunity Schemes (ESOS).

641 Subsections (2) and (3) set out that an ESOS scheme imposes requirements on undertakings as defined under the Companies Act 2006, for the purposes of enabling or requiring actions relating to assessing undertakings' energy consumption or resulting greenhouse gas emissions, and enabling, encouraging or requiring actions relating to identifying and achieving energy savings or emissions reductions. The purposes also include assessment of costs and benefits of possible energy savings or emissions reductions and setting out plans or targets for achieving them.

642 Subsections (4) and (5) explain the meaning of the terms 'energy saving' and 'emissions reduction' for the purpose of interpreting Part 11.

643 Subsection (6) enables regulations to make provisions determining the energy consumption and resulting greenhouse gas emissions for which an undertaking is responsible.

644 Under provisions in subsection (7), regulations may impose requirements on persons, give them functions or enable them to exercise judgments on matters.

645 Subsection (9) sets out that the existing ESOS scheme regulations can be treated as having been made under these new powers and explains that the term 'compliance body' in the existing regulations is covered by a reference to 'scheme administrator' in Part 11. A scheme administrator, as set out by section 260, is a public authority which may be appointed by regulations to carry out functions relating to administration, compliance monitoring and enforcement of an ESOS scheme's requirements.

Section 255: Application of energy savings opportunity schemes

646 The section enables regulations to set out the application of an ESOS scheme, including in terms of which undertakings it applies to, and what the territorial application of such a scheme may be. This section also enables regulations to make provision for situations where responsibility for energy consumption under such a scheme may need to be determined.

647 Subsection (2) enables regulations to set out how multiple participants (defined by section 266) may be treated as a single participant and require obligations on one participant to be treated as if imposed on another. This would allow the existing arrangements for corporate groups under the current regulations to be maintained.

648 Subsections (3) and (4) set out that powers under Part 11 relate to energy wholly consumed in the UK or an offshore area, or to energy partly consumed in those areas (for example in the case of energy used by transport which begins in the United Kingdom and ends outside the United Kingdom) but that regulations may also set out particular circumstances under which energy consumed outside the UK and offshore areas may also be covered by the regulations.

649 Subsection (5) stipulates that the provisions in Part 11 apply to all greenhouse gas emissions resulting from energy consumption to which Part 11 applies, whether they occur in the UK, an offshore area, or elsewhere.

650 Subsection (6) allows for regulations to set out how energy consumption is to be attributed to participants, including in certain specific situations such as where energy is consumed by someone that a participant has control or influence over.

651 Subsection (7) sets out the meaning of 'offshore area' for the purposes of subsections (3) to (5).

Section 256: Requirement for assessment of energy consumption

652 This section allows ESOS regulations to set out the requirements for an assessment of energy consumption and the greenhouse gas emissions resulting from it under an ESOS scheme. This may include, for example, the:

- frequency and periods of assessment,
- manner in which assessments are carried out, and
- record-keeping in relation to an assessment.

653 Subsection (3) enables regulations to provide that the whole or part of an assessment must be carried out, approved or audited by a specified person called 'an assessor'.

654 Subsections (4), (5) and (6) allow regulations to include provisions to enable or require that ESOS assessments include recommendations relating to energy savings or emissions reductions, and to require a cost-benefit analysis to be carried out first. Subsection (6) sets out details in relation to the meaning of 'cost-benefit analysis' for these purposes.

655 Subsections (7) and (8) enable regulations to make provisions relating to formal written reports and the sharing of them within the corporate group, and notification of the scheme administrator of compliance with the regulations, as well as the publication of this compliance information.

656 Subsection (9) allows regulations to make provision enabling alternative routes for complying with the ESOS regulations.

Section 257: Assessors

657 This section enables regulations to set out functions and powers relating to assessors (see section 256) and also to bodies responsible for maintaining list or register of individuals who may be appointed as ESOS assessors.

658 Subsections (2) and (3) enable regulations relating to the appointment of assessors, including powers to require that they must be of a specified description which may refer to any criteria, for example competence, or membership of a designated list, body or scheme.

659 Designation for these purposes must be either by the Secretary of State or scheme administrator (subsection (4)) and subsection (6) enables regulations relevant to this, including provisions relating to powers to give, review and remove those designations and to publish a list of them.

660 Subsections (7) and (8) enable regulations to provide for a designated body, scheme administrator or the Secretary of State to maintain lists or registers of persons who may, or who may not, be appointed as assessors (for example assessors who have been removed from a designated register for poor practice).

661 ESOS regulations under subsection (9) may authorise a scheme administrator to share specified information with designated bodies, for the purpose of ensuring that assessors still meet relevant criteria or to ensure the quality of ESOS assessments.

662 ESOS regulations under subsection (10) may enable the Secretary of State or a scheme administrator to give directions about a list or register to a person responsible for maintaining that list or register, and to require compliance with those directions.

Section 258: ESOS action plans

663 This section sets out that regulations may require ESOS participants to produce an ESOS action plan, which is a written statement of proposed actions or targets intended to achieve reductions of energy use or greenhouse gas emissions. Regulations may require participants who have an action plan with no actions or targets to explain why.

664 Subsection (4) and (5) allows regulations to set out requirements for action plans, including timings, form, content and publication requirements.

Section 259: Action to achieve energy savings or emissions reductions

665 This section enables ESOS regulations to require participants to take action to reduce energy use and greenhouse gas emissions. The section sets out different ways in which regulations may set these requirements by reference to various objectives and means (subsection (1)).

666 The objective may be to take a course of action, for example to implement specific recommendations from the ESOS assessment, or it may be to make a specified energy or emissions reduction, for example to reduce emissions by a set percentage.

667 The means may be either a requirement to achieve that objective, or a requirement which encourages the participant to achieve the objective. An example of the latter would be a requirement to publish information on whether they have carried out specific recommendations or set a public target to reduce emissions by a set percentage.

668 Subsection (2) sets out the kind of actions that may be required of a participant for the purposes of subsection (1), for example, taking action in accordance with an ESOS action plan.

669 Under subsections (3) and (4), regulations may require participants to report on actions taken or energy or emissions reductions achieved and may also require participants to provide an explanation when such requirements are not met.

670 Under subsection (5), regulations may set out requirements for the publication and verification of these reports.

671 Subsection (6) enables regulations to specify various matters in relation to the requirements on scheme participants, including that they may need to refer to a cost-benefit analysis, and may specify which participants are required to take action or in what circumstances.

Section 260: Scheme administration

672 The purpose of this section is to allow regulations to set out the requirements for the administration, compliance monitoring and enforcement of an ESOS scheme's requirements. Subsections (1) and (2) enable regulations to appoint public authorities, referred to as 'scheme administrators', to carry out functions relating to these objectives. Subsection (3) enables regulations allowing a scheme administrator to authorise others to carry out some or all of its functions.

673 Under subsection (4), regulations may make provisions relating to a scheme administrator's functions, for example, setting out arrangements for cooperation and information sharing between multiple scheme administrators.

674 Under subsections (5) to (8), regulations may make provisions relating to scheme administration which include:

- Requiring participants to provide facilities to allow the scheme administrator to carry out its functions,
- Allowing the scheme administrator to carry out functions relating to the publication of information about an ESOS scheme or participants,
- Providing for guidance to be given on the scheme and specify who must have regard to it, and

- Requiring payment to be made by participants to cover fees or costs incurred by the scheme administrator.

675 Regulations under subsection (9) may give powers to the Secretary of State and appropriate public bodies throughout the UK to require a scheme administrator to provide them with information relating to ESOS which is relevant to the scheme or their functions, which, for example, could include monitoring the effectiveness of policies.

Section 261: Enforcement, penalties and offences

676 This section makes provision about the enforcement of ESOS, enables offences to be created and details the powers of the scheme administrator to impose penalties.

677 Subsection (1) enables ESOS regulations to authorise a scheme administrator to exercise various enforcement powers, including to obtain information and evidence, for example by entering premises with a warrant and seizing documents or records, and to issue notices requiring participants to demonstrate compliance with requirements or to remedy a failure to comply.

678 Subsections (2) to (4) enable regulations to provide that a person may be liable to penalties if they fail to comply with the regulations or provide false or misleading information, and that participants may be required to notify the scheme administrator that they have failed to comply or are likely to do so. The penalty for a failure to comply may include publication of specified information or a financial penalty.

679 Subsection (5) enables regulations to make further provisions relating to financial penalties.

680 Subsections (6) to (9) provide that regulations may also create offences and set out further details in relation to those offences, including procedural requirements and potential liability for individuals.

Section 262: Appeals

681 This section enables regulations to provide a right to appeal in relation to ESOS decisions and enforcement action and requires a right of appeal to be available for the imposition of a financial penalty.

682 Under subsections (3) and (4), regulations must set out who will hear and determine the appeal and may include further provisions relating to making the appeal, for example, the procedure and any fee payable.

Section 263: ESOS regulations: procedure etc

683 This section establishes procedural requirements for the making of ESOS regulations. Subsection (1) contains a general duty for the Secretary of State to consult those likely to be affected by the regulations.

684 Subsections (3) to (8) require the Secretary of State to consult devolved authorities in Scotland, Wales or Northern Ireland where the regulations contain provisions within devolved competence. For regulations that have effect in relation to the compliance period beginning 6 December 2019, there is a general duty to consult with devolved authorities on such provisions. Otherwise, an enhanced consultation duty applies where regulations contain provisions within devolved competence, which includes requirements on giving of notice of the intention to make ESOS regulations, describing any provisions within devolved competence, and allowing a minimum of 28 days' notice for representations to be made.

685 Subsection (9) allows regulations to create exceptions to requirements in regulations and subsection (10) allows regulations to provide for application to the Crown.

686 Subsections (11) and (12) set out when regulations would be subject to the affirmative parliamentary procedure, and which would be subject to the negative procedure.

Section 264: Directions to scheme administrators

687 This section sets out that the Secretary of State may give directions to a scheme administrator, which they must comply with, and this includes a power for the Secretary of State to vary or revoke directions.

Section 265: Financial assistance to scheme administrators and participants

688 This section sets out that the Secretary of State may provide financial assistance in any form to scheme administrators and/or participants, which may be subject to conditions determined by, or in line with arrangements made by, the Secretary of State.

Section 266: Interpretation of Part 11

689 This section provides the meanings and definitions of various terms used in Part 11.

Part 12: Core Fuel Sector Resilience

Chapter 1: Introduction

Section 267: General objective

690 This section sets out that the functions of the Secretary of State under this part must be exercised with a view to ensuring that economic activity in the United Kingdom is not adversely affected by disruptions to core fuel sector activities and reducing the risk of emergencies affecting fuel supplies.

Section 268: "Core fuel sector activity" and other key concepts

691 This section sets out the key concepts used in this part of the Act. "Core fuels" are defined in subsection (4) as either crude oil-based fuels or renewable transport fuels. "Core fuel sector activity", which includes storing of such fuels, amongst other activities, is defined in subsection (2), so far as the activity is carried out in the United Kingdom in the course of a business, and contributes, either directly or indirectly, to the supply of core fuels to consumers or businesses in the UK. Another key concept is that of a "Part 12 facility owner" meaning the owner of a pipeline, terminal or other facility or infrastructure which is used wholly or partly for the purpose of core fuel sector activities.

692 This section also defines such concepts as continuity of supply of core fuels and core fuel sector resilience which relate to the purposes for which the measures in this part of the Act may be employed.

Chapter 2: Powers for Resilience Purposes

Section 269: Directions to particular core fuel sector participants

693 This section contains powers to give directions to a person who carries on core fuel sector activities in the course of a business which has capacity in excess of 500,000 tonnes or is a Part 12 facility owner whose owned facility has capacity in excess of 20,000 tonnes and requires them to do anything in relation to their relevant activities or assets for the purposes set out in the section.

694 Subsections (1) and (2) provide that the Secretary of State may give directions for the purpose of maintaining or improving core fuel sector resilience but may not do so unless the Secretary of State considers that the persons to whom the direction would apply have failed to make sufficient progress with steps the Secretary of State considers necessary for maintaining or improving core fuel sector resilience.

695 When there is a disruption to or failure of continuity of core fuel supplies, subsection (3) provides that the Secretary of State may give directions for the purpose of restoring continuity of supply of core fuels or counteracting the disruption or failure, or its potential impact.

696 If the Secretary of State considers that there is a significant risk of disruption to or failure of continuity of core fuel supplies, subsection (4) provides that the Secretary of State may give directions for the purpose of reducing the risk or reducing the potential adverse impact of the disruption or failure.

Section 270: Procedure for giving directions

697 This section outlines the process for giving directions under section 270. This includes the requirement for the Secretary of State to give notice to the recipient of the proposed direction and consider any representations made by them. The Secretary of State must also consult with relevant bodies, including those in the devolved administrations insofar as a direction relates to relevant activities or assets in aa territory for which they are responsible, before giving a direction and consider any representations made by them.

Section 271: Offence of failure to comply with a direction

698 Subsection (1) sets out that any person who without reasonable excuse fails to comply with a direction given to them under section 270 commits an offence and is liable on conviction to a fine or imprisonment (or both).

Section 272: Corresponding powers to make regulations

699 This section contains a power to make regulations which will apply to a class or description of persons who carry on core fuel sector activities in the course of a business which has capacity in excess of 1,000 tonnes or are Part 12 facility owners whose owned facility has capacity in excess of 1,000 tonnes and require them to do anything in relation to their relevant activities or assets for the purposes set out in the section.

700 Subsections (1) and (2) provide that the Secretary of State may make regulations for the purpose of maintaining or improving core fuel sector resilience but may not do so unless the Secretary of State considers that the persons to whom the regulations would apply have failed to make sufficient progress with steps the Secretary of State considers necessary for maintaining or improving core fuel sector resilience.

701 When there is a disruption to or failure of continuity of core fuel supplies, subsection (3) provides that the Secretary of State may make regulations for the purpose of restoring continuity of supply of core fuels or counteracting the disruption or failure, or its potential impact.

702 If the Secretary of State considers that there is a significant risk of disruption to or failure of continuity of core fuel supplies, subsection (4) provides that the Secretary of State may make regulations for the purpose of reducing the risk or reducing the potential adverse impact of the disruption or failure.

703 Subsection (7) sets out who the Secretary of Statement must consult with before making regulations under this section. This includes that the Secretary of State must consult with bodies in the devolved administrations insofar as the regulations relate to relevant activities or assets in a territory for which they are responsible.

Section 273: Power to require information

704 This section enables the Secretary of State to give notice to a person carrying on core fuel sector activities in the course of a business which has capacity in excess of 1,000 tonnes or a Part 12 facility owner whose owned facility has capacity in excess of 1,000 tonnes, requiring them to provide information about their relevant activities or assets.

705 Subsection (2) enables the Secretary of State to give notice to a relevant wetstock manager requiring them to provide information about relevant activities or assets of a person carrying on core fuel sector activities to whom the relevant wetstock manager provides stock management services. A relevant wetstock manager is defined in subsection (3).

706 Subsection (4) provides that the Secretary of State may only require information under this section for the purposes of maintaining or improving core fuel sector resilience.

707 Subsection (6) provides that the Secretary of State must notify the person in advance of the proposed notice to provide information and consider any representations made by that person.

Section 274: Duty to report incidents

708 This section places a duty on persons to notify the Secretary of State where they know or have reason to suspect that an incident affecting their activities or assets in such a way as to create a significant risk of, or cause, disruption or failure to the continuity of core fuel supply, has occurred or is occurring. This duty applies to a person who is carrying on core fuel sector activities in the course of a business which has capacity in excess of 500,000 tonnes; is a Part 12 facility owner in whose case the owned facility has capacity in excess of 500,000 tonnes; or is a person of a class otherwise defined in regulations made under this section.

709 Subsection (4) also gives the Secretary of State power to seek further information from a person giving notice under this section.

710 Subsection (5) requires the Secretary of State to notify the person in advance of the proposed notice to provide information under subsection (4) and consider any representations made by that person.

Section 275: Contravention of requirement under section 273 or 274

711 This section creates offences associated with breach of section 273 or 274. A person who without reasonable excuse, fails to comply with a requirement imposed by a notice to provide information under section 273(1) or (2) or fails to provide additional information about a notified incident under section 274(4) commits an offence and is liable on conviction to a fine or imprisonment (or both) under subsection (3).

712 This section also creates an offence associated with breach of section 273(1). A person who without reasonable excuse fails to report an incident under section 273(1) commits an offence and is liable on conviction to a fine or imprisonment (or both) under subsection (3).

Section 276: Provision of information at specified intervals

713 This section provides that the Secretary of State may make regulations requiring a person carrying on core fuel sector activities in the course of a business which has capacity in excess of 1,000 tonnes or a Part 12 facility owner whose owned facility has capacity in excess of 1,000 tonnes, to provide information at prescribed intervals about their relevant activities or assets.

714 Subsection (2) provides that the Secretary of State may make regulations in respect of a relevant wetstock manager requiring them to provide information at intervals about the relevant activities or assets of a person carrying on core fuel sector activities to whom the relevant wetstock manager provides stock management services.

715 Subsection (3) states that this power may only be exercised for the purpose of maintaining or improving core fuel sector resilience.

Section 277: Disclosure of information held by the Secretary of State

716 This section sets out that information obtained under the power to require information (section 273), the duty to report incidents (section 274), or the power to require information at specified intervals (section 276) may be disclosed to other government departments or devolved authorities for the purposes of maintaining or improving core fuel sector resilience, restoring or counteracting a disruption to or failure of continuity of core fuel supply (or potential adverse impact), or if necessary for the purpose of criminal proceedings. There are restrictions on this power where disclosure would contravene data protection legislation or certain parts of the Investigatory Powers Act 2016.

Section 278: Disclosure of information by HMRC

717 This section gives His Majesty's Revenue and Customs (HMRC) power to make disclosures to the Secretary of State for the purposes of facilitating the Secretary of State exercising functions relating to core fuel sector resilience. The section provides limitations on such disclosures, including that the information must not be further disclosed without the consent of HMRC.

Section 279: Appeal against notice or direction

718 This section sets out that a person to whom a direction is given under section 270, or who is given a notice to provide information under section 273, or to provide further information about a notifiable incident under section 274(4), may appeal a direction or notice to the First-tier Tribunal on the grounds which are set out in this section.

Chapter 3: Enforcement

Section 280: False statements etc

719 This section specifies that a person who makes a statement they know to be false or materially misleading when responding to a notice to provide information (section 273), a notice to provide further information about a notified incident (section 274(4)), in providing information at specified intervals under regulations (section 276), or in otherwise making a statement to the Secretary of State in connection with Part 12, commits an offence and is liable on conviction to a fine or imprisonment (or both).

Section 281: Offences under regulations

720 This section sets out the parameters for offences that may be created under regulations in section 272 (corresponding powers to make regulations) and section 276 (provision of information at specified intervals).

Section 282: Proceedings for offences

721 This section sets out the consents required to bring proceedings for an offence under this Part, including those contained in regulations made under sections 272 or 276, if the prosecution is brought in England and Wales, or in Northern Ireland.

Section 283: Liability of officers of entities

722 This section sets outs that where an offence under this Part that has been committed by a body corporate is proved to have been committed with the consent, connivance, or neglect of an officer of that body corporate, then the officer commits an offence as well as the body corporate. The section also applies to partners of Scottish partnerships.

Section 284: Enforcement undertakings

723 This section provides that where the Secretary of State has reasonable grounds to suspect that a person has committed an offence which falls within subsection (5), the Secretary of State may choose to accept an enforcement undertaking. An enforcement undertaking is defined in subsection (3) as an undertaking to take action for any purposes specified in subsection (4) or to take action of a description set out in regulations made by the Secretary of State.

724 A person who has an enforcement undertaking accepted by the Secretary of State may not be convicted of the offence in relation to the relevant act or omission unless they do not comply with the enforcement undertaking (or any part of it) (subsection (2)). If a person gives an undertaking which is accepted by the Secretary of State and fails to fully comply with the undertaking but has complied with part of it, then the Secretary of State must take into account such partial compliance when deciding whether to take any criminal proceedings in respect of the offence (subsection (7)).

Section 285: Guidance: criminal and civil sanctions

725 This section requires the Secretary of State to issue guidance about sanctions and enforcement of offences under this Part (including in relation to criminal sanctions and enforcement undertakings) and outlines the procedure that the Secretary of State must follow before issuing or revising such guidance.

Section 286: Guidance: Parliamentary scrutiny

726 This section sets out the parliamentary procedure the Secretary of State must follow before issuing guidance under section 285.

Chapter 4: General

Section 287: Financial assistance for resilience and continuity purposes

727 This section enables the Secretary of State to provide financial assistance for the purpose of maintaining or improving core fuel sector resilience or for the purpose of securing or maintaining continuity of supply of core fuels. Financial assistance under this section may be given by way of the methods set out in subsection (3).

Section 288: Power to amend thresholds

728 This section enables the Secretary of State to make regulations to vary the specified threshold capacity values that apply in respect of those provisions listed in subsection (2).

Section 289: Interpretation of Part 12

729 This section sets out how various terms within this Part are to be interpreted.

Part 13: Offshore Wind Electricity Generation, Oil and Gas

Chapter 1: Offshore Wind Electricity Generation

Section 290: Meaning of "relevant offshore wind activity"

730 Subsection (1) sets out the definition of a "relevant offshore wind activity". The definition includes offshore wind plans (i.e., the identification of an area for offshore wind development, whether or not any particular offshore wind electricity infrastructure is in contemplation). This would include, for example, offshore wind leasing rounds, as undertaken by The Crown Estate.

731 Subsection (2) defines "offshore wind electricity infrastructure", which includes offshore transmission infrastructure used for the conveyance of electricity generated from offshore wind (for example, a "bootstrap" cable). These are cables in the UK marine area that convey electricity from a mixture of sources, including offshore wind-generated electricity. This definition would not include other marine infrastructure, such as port developments.

732 Subsection (3) outlines that offshore infrastructure used for the conveyance of electricity generated from sources other than offshore wind is covered by subsection (2)(b)(ii), provided that it will also be used for the conveyance of electricity generated from offshore wind.

Section 291: Strategic compensation for adverse environmental effects

733 If a relevant offshore wind activity has undertaken all feasible measures to avoid, reduce and mitigate an "adverse environmental effect" (as defined in subsection (4)) on protected sites, a public authority may decide to agree to a relevant offshore wind activity in the public interest (such as energy security and net zero targets). Compensatory measures must then be undertaken or secured.

734 This section enables the public authority that is subject to environmental compensation obligations to determine that compensatory measures taken or secured count towards discharging relevant environmental compensation obligations. The intention is that 'strategic compensation' may be delivered in relation to one or more relevant offshore wind activities, through the powers in subsection (3).

735 A definition of 'public authority' is included in section 295. Section 291 only applies where a public authority is subject to one or more environmental compensation obligations (a statutory duty or condition under 291(2)). The reference to "the public authority" in 291(3) is to whichever public authority is subject to the environmental compensation obligation in question. For example, the Scottish Ministers may be the public authority that is subject to an environmental compensation obligation in certain cases.

736 Subsection (3) sets out that the public authority may determine that measures taken or secured, or to be taken or secured, by it may count towards discharging its environmental compensation obligations. It enables the delivery of strategic compensation, for example through the 'banking' of measures that have already been delivered so they can be allocated against future relevant offshore wind activities and enables measures that will be delivered in the future to be allocated against relevant offshore wind activities. When considering whether the environmental obligations have been discharged, a public authority may rely on a combination of measures that have already been taken and measures to be delivered in the future. As per subsection (5), these measures may be taken either at the same site(s) as the relevant offshore wind activity or elsewhere.

737 Subsection (7) allows for one public authority to treat measures taken or secured (or to be taken or secured) by another public authority as measures taken or secured (or to be taken or secured) in the exercise of its own functions if it has the consent of the other public authority. For example, this could allow the Marine Management Organisation to treat compensatory measures that have already been taken or secured by the Department for Energy Security and Net Zero's Secretary of State as taken or secured by the Marine Management Organisation when determining a marine licence in relation to a relevant offshore wind activity, provided the department's Secretary of State has given consent to do so.

738 Subsections (6) and (8) provide definitions for the interpretation of section 291, giving the meaning of protected marine areas and relevant conservation objectives with reference to existing legislation.

Section 292: Marine recovery fund

739 This section confers powers to introduce one or more Marine Recovery Funds (MRFs), which will support delivery of strategic compensation (in relation to one or more relevant offshore wind activities). Commercial, competition and other project management information sensitivities can limit opportunities for offshore wind farm developers to easily deliver strategic compensatory measures in collaboration with other developers. A MRF is intended to be an optional route for developers or public authorities to discharge compensation conditions imposed on them in respect of an "adverse environmental effect" (as defined in section 291(4)). This means that, where appropriate measures are available to an MRF, they will be able to make a payment to discharge the relevant condition (if the person who imposed the compensation condition makes a determination to the effect).

740 Subsection (1) confers a power on the Secretary of State for the establishment, operation and management of one or more MRF, to be made by regulations. Subsection (2) describes a MRF as a fund into which payments may be made for expenditure on strategic compensatory measures to compensate for the adverse environmental effects of relevant offshore wind activities. Subsection (3) makes clear that the following provisions do not limit the scope of the regulation making power in subsection (1).

741 Subsection (4) sets out provisions which may be made using the regulation making power in subsection (1) relating to a "compensation condition" (defined in subsection (5)), specifically that regulations may make provision enabling a determination to be made by or on behalf of the person who imposed the compensation condition as to whether and the extent to which a payment into a MRF discharges a compensation condition. A payment may discharge a compensation condition in whole or in part.

742 Subsections (7) and (8) set out further provisions which may be made using the regulation making power in subsection (1) to enable the funds paid into the MRF(s) to be spent on the various activities needed to deliver and maintain strategic compensatory measures for the required duration. Subsection (8) also makes provision for the delegation of functions related to the operation or management of an MRF to one or more authorities and third parties as appropriate.

743 Subsection (9) provides which functions may be delegated to the listed public authorities. Subsection (10) provides that regulations under section 292 that make provision for the delegation of functions to a Scottish public authority, a Welsh public authority or a Northern Ireland public authority must require the consent of the Scottish Ministers, the Welsh Ministers or the Department of Agriculture, Environment and Rural Affairs in Northern Ireland (as relevant).

744 Subsection (11) provides for the cancellation of a delegation of a function, and for the Secretary of State to retain the ability to exercise functions in parallel. Subsection (12) requires the Secretary of State to consult the devolved administrations prior to making regulations, to the extent that the regulations relate to activities in their areas. Subsection (13) clarifies that new regulations are subject to the negative procedure.

Section 293: Assessment of environmental effects etc

745 This section confers a power on the appropriate authority to make provision by regulations for the assessment of environmental effects of relevant offshore wind activities on protected sites; and make provision about the taking or securing of compensatory measures for adverse environmental effects on those sites. New regulations for the assessment of environmental effects will apply to relevant offshore wind activities only.

746 Subsection (2) provides that the appropriate authority is the Secretary of State or where relevant to regions in Scotland, Wales and Northern Ireland, the Scottish Ministers, Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs respectively. Subsection (3) sets out that Welsh Ministers are not the regulation-making authority for generating stations that are nationally significant infrastructure projects.

747 Subsection (4) sets out the modifications that may be made to assessments required under Regulation 63 of The Conservation of Habitats and Species Regulations 2017, Regulation 28 of The Conservation of Offshore Marine Habitats and Species Regulations 2017, Regulation 48 of the Conservation (Natural Habitats &c.) Regulations 1994, and Regulation 43 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995. This includes the matters to be dealt with, who carries out the assessment, prohibiting the granting of consent, compensatory measures, and which existing legislation may be disapplied or modified, including devolved legislation.

748 Subsection (5) refers to existing legislation which may be disapplied or modified, and subsection (6) clarifies the legislation that cannot be disapplied or modified. Both subsections include details of relevant legislation across the Devolved Administrations which may, or may not, be disapplied or modified. For example, regulation 29 of The Conservation of Offshore Marine Habitats and Species Regulations 2017 which refers to a plan or project being carried out for Imperative Reasons of Overriding Public Interest, cannot be modified or disapplied.

749 Subsection (7) sets out that regulations made by the Secretary of State may not remove a function from a Scottish, Welsh or Northern Ireland public authority or provide for such functions to be exercisable, concurrently, by another person. Regulations may, however, modify such a function.

750 Subsections (8), (10), (11) and (12) set out provisions which may be made under section 293, including to enable a person specified in the regulations (or the appropriate authority) to give a direction; to require the appropriate authority or a specified person to give guidance; and to confer functions on certain people. Subsection (9) prevents regulations authorising the giving of a direction to a Scottish or Welsh public authority by a person other than (as the case may be) the Scottish Ministers or the Welsh Ministers. Subsection (13) provides definitions for terms used in section 293.

Section 294: Regulations under section 293: consultation and procedure

751 This section sets out the consultation and procedural requirements that the Secretary of State, Scottish Ministers, Welsh Ministers, and the Department of Agriculture, Environment and Rural Affairs must follow when making of new regulations under section 293.

752 Subsection (1) sets out the bodies whom the Secretary of State must consult, including in certain circumstances the devolved administrations. Subsection (2) provides that new regulations are subject to the affirmative procedure.

753 Subsection (3) sets out the bodies whom Scottish Ministers must consult, including the Secretary of State and, in certain circumstances, the devolved administrations. Subsection (4) provides that new regulations made by Scottish Ministers are subjective to the affirmative procedure.

754 Subsection (5) sets out the bodies whom the Welsh Ministers must consult, including the Secretary of State and, in certain circumstances, the devolved administrations. Subsections (6) and (7) provide that the power to make regulations is exercisable by statutory instrument which must be laid before and approved by a resolution of the Senedd Cymru.

755 Subsection (8) sets out the bodies whom DAERA must consult, including the Secretary of State and, in certain circumstances, the devolved administrations. Subsections (9) and (10) provide that the power to make regulations is exercisable by statutory rule and must be laid before and approved by a resolution of the Northern Ireland Assembly.

Section 295: Interpretation of Chapter 1

756 In addition to section 290 and section 291, this section sets out the definitions for terms used throughout this Chapter, including "adverse environmental effect", "consent", and "protected marine area".

Chapter 2: Oil and Gas

Section 296: Arrangements for responding to marine oil pollution

757 This section allows the Secretary of State to make regulations related to oil pollution emergency planning, response, and inspection for offshore oil and gas operations, offshore CO_2 storage activities and offshore hydrogen production and storage works. Subsection (2) states, in more detail, what type of operation or infrastructure will be captured by the regulation making powers. Subsection (3) sets out that regulations may make provision about the implementation, maintenance, and review of an emergency plan. Subsection (4) specifies how the subsection (1) power may be used to cover the reporting of incidents. Subsection (5) provides inspection powers. Subsection (6) makes further supplemental provision about the type of matters that may be covered by the regulation making power, which includes the following:

- New or amended definitions, to account for new activities (such as hydrogen production and storage),
- Delegation of functions,
- The charging of any fees associated with regulatory functions,
- The keeping of information, and
- The creation of criminal offences or civil penalties in relation to contraventions of the regulations.

758 This section also sets out the maximum penalties associated with any criminal offence, as well as maximum civil penalties that could be issued.

Section 297: Habitats: reducing effects of offshore oil and gas activities etc

759 This section contains a power to make regulations for the purposes of, or connected with, habitats assessment of offshore activities relating to oil and gas, including carbon dioxide storage and hydrogen production and storage. Subsections (2) and (3) enable regulations to be made preventing a specified type of activity from being carried out, or licence being granted, unless the Secretary of State has first considered the implications for relevant sites and granted a consent (which may be subject to conditions). Subsection (4) enables the Secretary of State to give directions. Subsection (5) provides that regulations cannot be made under subsections (2), (3) or (4), unless the Secretary of State considers they would contribute to the protection of relevant sites.

760 Subsection (6) explains that a "relevant site" may be defined in accordance with the regulations, but that definition must be framed by reference to natural habitats or habitats of species.

761 Subsection (7) contains further details about the provisions that can be made under the power in this section. For example, regulations may provide for:

- definitions,
- to confer functions,
- revocation or modification of consents,
- fees for associated regulatory functions, and
- enforcement.

762 This section also sets out the maximum penalties associated with any criminal offence, as well as maximum civil penalties that could be issued.

Section 298: Regulations under sections 296 and 297: procedure with devolved authorities

763 This section requires the Secretary of State to carry out a consultation process, as set out in subsections (1), (2) and (3), with relevant devolved authorities, where regulations under Section 296 contain provision within devolved competence. Subsection (4) sets out the meaning of "relevant devolved authority".

764 This Section also requires, under subsection (5), the Secretary of State to obtain consent: from Scottish Ministers, where regulations under Section 297 contain provision within Scottish devolved competence; and, under subsection (6), from Welsh Ministers, where regulations under Section 297 contain provision within Welsh devolved competence. Subsection (7) provides interpretive provision for "devolved competence".

Section 299: Charges in connection with abandonment of offshore installations

765 Subsection (1) inserts a new section 38C into the Petroleum Act 1998 ("PA 1998").

766 New section 38C of the PA 1998 contains powers to make regulations to charge for costs related to regulatory functions related to the decommissioning of offshore oil and gas infrastructure, under Part 4 of the PA 1998.

767 Section 30 Energy Act 2008 applies Part 4 PA 1998 (subject to modifications) to the decommissioning of carbon storage installations established for offshore activities requiring a licence under section 17 of the Energy Act 2008. Therefore, new section 38C PA 1998 will apply to the decommissioning of offshore carbon storage installations too.

768 Subsection (2) amends section 30 of the Energy Act 2008. It provides that the negative resolution procedure will apply in the Scottish Parliament should Scottish Ministers exercise the new powers in Section 38C of the Petroleum Act 1998 to make regulations to charge for their functions in connection with decommissioning of carbon storage installations.

769 The remaining subsections of this section provide for consequential amendments to Part 4 PA 1998. In particular, the two fee charging provisions currently contained in section 29(5) and section 34(4) of that Act will be omitted once the relevant subsections of this section are commenced in accordance with regulations made under section 334 (Commencement).

Section 300: Model clauses of petroleum licences

770 This section provides that all model clauses regarding the change of control of a Licensee in possession of any current and future Seaward Petroleum Production licences and all Landward Petroleum Production licences (but not Landward or Seaward Exploration licences) will be amended to include new ex ante (before the event) powers for the Oil and Gas Authority (OGA). This is to ensure that the governance, technical and financial capability of a Licensee in possession of a Petroleum Production licence is not undermined by an undesirable change of control and replaces the OGA's existing ex-post (after the event) powers to intervene after the change of control of a Licensee.

Section 301: Power of OGA to require information about change in control of licensee

771 This section grants powers to the OGA to request information which is reasonably required by the OGA in order to exercise its functions in relation to a change or potential change of control of a petroleum Licensee.

Part 14: Civil Nuclear Sector

Chapter 1: Civil Nuclear Sites

Section 302: Application to the territorial sea of requirement for nuclear site licence

772 Section 302 amends section 1 and section 26 of the Nuclear Installations Act 1965 and section 68 of the Energy Act 2013 (EA 2013) to make it expressly clear that certain nuclear sites located wholly or partly in or under the sea (within the boundaries of the territorial sea adjacent to the UK) require a licence and are regulated by the Office for Nuclear Regulation.

Section 303: Decommissioning of nuclear sites etc

773 Section 303 amends provisions of the Nuclear Installations Act 1965 which concern nuclear third party liability and the processes for revoking and varying a nuclear site licence.

774 It confirms that a nuclear site licence is required for decommissioning.

775 Section 303 changes the conditions that must be satisfied before a nuclear site licence can be varied to exclude part of a site from that licence. The new conditions vary depending on the former use of that part of the site. The section also requires the appropriate national authority to consult the relevant Health and Safety Executive before revoking a nuclear site licence and removes a nuclear site licence holder's ability to unilaterally surrender their licence. Licence holders will still be able to request that the appropriate national authority revoke or vary their licence.

776 Section 303 also changes the conditions that must be satisfied in order to end the period of responsibility in respect of part of a nuclear licence site. The new conditions are based on the risk posed by the relevant part of the site. Where relevant, these amendments implement the OECD Nuclear Energy Agency's 2014 "Decision and Recommendation of the Steering Committee Concerning the Application of the Paris Convention to Nuclear Installations in the Process of Being Decommissioned".

777 Section 303 also ensures that, where a nuclear site licence is varied to remove what would otherwise be a relevant disposal site from the licence, the duties in section 7B of the Act apply to the operator of that relevant disposal site.

Section 304: Excluded disposal sites

778 Section 304 excludes certain low-risk disposal sites to from the nuclear third-party liability regime, provided certain conditions are met. In doing so, it partly implements the OECD Nuclear Energy Agency's 2016 "Decision and Recommendation Concerning the Application of the Paris Convention on Third Party Liability in the Field of Nuclear Energy to Nuclear Installations for the Disposal of Certain Types of Low-level Radioactive Waste". Regulations made using powers in this section will complete the implementation of the Decision.

779 Section 304 also sets out the steps to be taken if an excluded disposal facility subsequently accepts unsuitable waste, i.e., waste that puts them in breach of the above conditions.

Section 305: Accession to Convention on Supplementary Compensation for Nuclear Damage

780 Section 305 introduces the Schedule 22 which contains the amendments necessary to implement the Convention on Supplementary Compensation for Nuclear Damage (CSC). Both section 305 and the Schedule will come into force on the day on which the CSC comes into force in respect of the United Kingdom (and the Secretary of State must publish a notice of the date of that day as soon as possible afterwards).

Section 306: Power to implement Convention on Supplementary Compensation for Nuclear Damage

781 Section 306 gives the Secretary of State the power to make modifications to Schedule 22, the Nuclear Installations Act 1965 and other relevant legislation in relation to UK's accession to and implementation of the CSC (two months after Royal Assent). This power may be used to implement the CSC, or for the purposes of dealing with any other matter arising out of, or related to, the CSC. This power would be exercised through making regulations subject to the affirmative procedure to ensure the opportunity for parliamentary scrutiny.

Chapter 2: Civil Nuclear Constabulary

Section 307: Provision of additional police services

782 Section 307 amends the Energy Act 2004 (c. 3) to insert a new section 55A, which creates an additional statutory function for the Civil Nuclear Constabulary (CNC). The new function will enable the CNC to provide a wider range of policing services beyond the civil nuclear sector, in the interests of national security. This could be used to enable the CNC to provide armed guarding services to other facilities that provide vital services, or to deliver other protective policing services in response to emerging threats. The provision of additional police services by the CNC may only be provided with the consent of the Secretary of State and is subject to safeguards to protect the CNC's primary civil nuclear security function and ensure transparency (subject to the needs of national security).

783 Section 307 also makes consequential amendments in relation to the CNC's jurisdiction and provides a power for the CNPA to enter into agreements. It also adds the CNC to the definition of "extra police services" in the Counter-Terrorism Act 2008 (c.28) in relation to the policing of gas facilities in England, Wales and Scotland.

Section 308: Provision of assistance to other forces

784 Section 308 amends the Energy Act 2004 to insert a new section 55B, which enables the CNC's Chief Constable to provide CNC officers or other assistance to another police force in England, Wales or Scotland, in line with powers available to the England and Wales territorial police forces,

the British Transport Police and the Ministry of Defence Police. The provision enables the CNC, in response to a request from the Chief Constable of another force, to provide support for spontaneous or planned deployments, and/or to provide specialist support as required, and is subject to safeguards to protect the CNC's primary civil nuclear security function. Where the CNC is providing assistance under this arrangement, CNC officer(s) would be under the direction and control of the chief officer of the requesting force and would have the same powers and privileges as a member of that force.

Section 309: Cross-border enforcement powers

785 Section 309 amends the Criminal Justice and Public Order Act 1994 (c.33) so that members of the CNC are able to exercise powers in Part 10 of that Act. Sections 136 and 137 of the Criminal Justice and Public Order Act 1994 deal with cross border enforcement by the police, whereby an individual who is suspected of committing an offence in one part of the UK can be apprehended in another part of the UK – either by the execution of a warrant or exercising powers of arrest in the absence of a warrant. In line with powers already available to members of the territorial police forces and the British Transport Police, the amendments will allow the CNC to execute a warrant to arrest a person, or to exercise powers of arrest without a warrant where the person is suspected to committing an offence, in England, Wales or Scotland. The amendments do not allow the CNC to exercise these powers in Northern Ireland since the CNC do not operate in Northern Ireland.

Section 310: Publication of three-year strategy plan

786 Section 310 amends the legislative requirement for the Civil Nuclear Police Authority to publish a three-year strategy annually, to every three years.

Chapter 3: Relevant Nuclear Pension Schemes

Section 311: Civil nuclear industry: amendment of relevant nuclear pension schemes

787 Section 311 enables regulations to be made requiring persons with responsibility for pension schemes for public sector employees in the nuclear sector to amend those schemes in line with wider changes to public sector pensions.

Section 312: Meaning of "relevant nuclear pension scheme"

788 Section 312 defines "relevant nuclear pension scheme" for the purposes of the Chapter.

Section 313: Information

789 Section 313 gives a person who is required, by regulations under section 311, to amend a relevant nuclear pension scheme the power to require persons with relevant information to provide that information.

Section 314: Further definitions

790 Section 314 sets out definitions relevant to the provisions about amendment of relevant nuclear pension schemes.

Section 315: Application of relevant pensions legislation

791 Section 315 enables the Secretary of State to make regulations about the application of relevant pensions legislation, or amending relevant pensions legislation, in connection with the amendment of a relevant nuclear pension scheme in pursuance of regulations under section 311.

Section 316: Procedure for regulations under Chapter 3

792 Section 316 provides that a statutory instrument containing regulations under any provision of this chapter is subject to the affirmative procedure. It also provides for the disapplication of the hybrid instrument procedure in the House of Lords.

Chapter 4: Great British Nuclear

Section 317: Great British Nuclear

793 Section 317 allows the Secretary of State for the Department of Energy Security and Net Zero to designate by notice a company as Great British Nuclear (GBN), provided that the company is limited by shares and wholly owned by the Crown.

794 The Secretary of State would also have a power to revoke the designation of a company as GBN when required.

Section 318: Crown status

795 Section 318confirms that a company designated as GBN will not have Crown status. It also confirms that GBN's property will not be regarded as owned by or on behalf of the Crown.

Section 319: Great British Nuclear's objects

796 Section 319sets out GBN's role as a delivery vehicle for Government policy for new nuclear projects. It sets its objects as a company as undertaking activities that 'facilitate the design, construction, commissioning and operation of nuclear energy generation projects for the purpose of furthering HM Government's policies.'

797 This will enable GBN to have an evolving and enduring role within the civil nuclear sector. GBN will act as an expert-led delivery body with the requisite skills and knowledge to deliver on the policy set by HM Government. It is anticipated that GBN will carry out a variety of functions including, but not limited to, de-risking the early stages in the development of nuclear projects by deploying co-funding from the Government to support the development of selected technologies, ensuring the right financing and site arrangements are in place, amongst a range of other functions.

Section 320: Financial assistance

798 Section 320 allows the Secretary of State to give financial assistance to GBN to deliver its objectives. This funding can be provided to GBN in any form, including grant or via the acquisition of shares. In addition to providing the funding for GBN's operating costs, this power will enable GBN to deploy government funding via its subsidiaries, to invest in individual nuclear projects and co-fund technologies through their development.

799 Section 320 also allows the Secretary of State to provide financial assistance directly to 'any other person to facilitate the design, construction, commissioning and operation of nuclear energy generation projects.' This provides flexibility to the Secretary of State when planning future projects and also means that, should GBN cease to exist in the future, the Secretary of State can continue to fund ongoing projects.

800 Section 320 will allow for financial assistance to be provided by the acquisition of debt instruments.

801 Funding may be provided subject to conditions set by the Secretary of State and the exact level of funding provided for investment in new nuclear projects will be subject to future spending review decisions.

Section 321: Secretary of State directions and guidance

802 Section 321 allows the Secretary of State to give Great British Nuclear directions or guidance. Such directions and guidance must be published, and any directions must also be laid before Parliament.

803 The Government's policy intention is that GBN will generally be operationally independent. However, given GBN's broad and potentially shifting responsibilities over time it is considered necessary that the Secretary of State has a mechanism through which to set the strategic direction of GBN in line with government policy.

Section 322: Annual report

804 Section 322 requires that GBN send a report to the Secretary of State at the end of each financial year outlining its activities undertaken during that year. The Secretary of State will lay this before Parliament, together with any comments he/she wishes to add. This will ensure that Parliament remains informed of the operations of GBN.

Section 323: Annual accounts

805 As a company under the Companies Act GBN must produce annual accounts and reports. Section 323 requires that GBN send a copy of these to the Secretary of State before the end of the filing period. The Secretary of State would then be required to lay them before Parliament, ensuring Parliament remains informed of GBN's performance. (This is in addition to the report on GBN's activities required by section 322).

Section 324: Transfer schemes

806 Section 324 allows the Secretary of State to make transfer schemes to transfer property, rights and liabilities in connection with GBN.

807 When a GBN company is designated and as its activities evolve over time, property, rights and liabilities may need to be transferred to or from GBN to other relevant public bodies or companies. Sections 1(a) and (b) list a broad range of potential transferors and transferees to provide flexibility for future transfers.

808 There may also be future scenarios where GBN assumes or relinquishes involvement in particular civil nuclear generation projects, necessitating the transfer of property, rights and liabilities to or from it.

809 Section 324 sets out a set of principles, procedures and expectations in relation to the transfer scheme that will help provide clarity to affected parties. For example, to ensure the representations of transferors are taken into consideration, the Secretary of State will be required to consult with them, or any other such person considered appropriate.

Section 325: Transfer schemes: compensation

810 Section 325 allows the Secretary of State to provide for compensation to a transferor or a person who has suffered loss or damage in consequence of the transfer schemes.

811 The principle is that a transferor or a person entitled to compensation should be sufficiently compensated by the transferee(s) and/or the Secretary of State for the costs borne by them in connection with the transfer of property, rights and liabilities under the transfer schemes.

812 The liability for paying this compensation would lie with the transferee or the Secretary of State.

Section 326: Transfer schemes: taxation

813 Section 326 allows the Treasury to vary the way tax has effect in relation to things transferred under transfer schemes made under section 324. This will ensure that there are no unnecessary circular movements of money within government and will ultimately ensure value for money for government.

814 This power should only be exercised for transfers between public bodies, private sector transfers will be treated in the same manner as commercial transactions.

Section 327: Transfer schemes: provision of information or assistance

815 Section 327 will make certain that transfers under the transfer scheme are efficiently carried out without unnecessary obstruction to the provision of essential information or assistance that are required for a transfer. This amendment ensures this by providing the Secretary of State with the ability to direct a person involved in the transfer to provide such information and assistance, for example any relevant documents.

Section 328: Reimbursement and compensation in connection with designation

816 Section 328 provides that persons that have reasonably incurred expenditure in connection with the designation of a company as GBN be reimbursed by the Secretary of State.

Section 329: Pension arrangements in connection with Great British Nuclear

817 Section 329 allows the Secretary of State to make provision, by regulations, about pension arrangements in relation to GBN. During future transfers this regulation making power will facilitate the participation of GBN in pension schemes for transferring employees. Before the power is exercised, the relevant pension scheme trustees and principal employers must be consulted. They may also be directed by the Secretary of State to provide relevant information and assistance.

Part 15: General

Section 330: Power to make consequential provision

818 This section confers on the Secretary of State a regulation making power to make consequential amendments which arise from the Act. Regulations under this section may amend this Act or any provision of any other primary legislation or any provision made under that other legislation that was passed before this Act or in the same session of Parliament as this Act. The amendments that can be made include amendments to legislation in the devolved administrations.

Section 331: Regulations

819 This section provides that regulations made under this Act are to be made by statutory instrument.

820 Subsection (2) provides that, where regulations are made under this Act those regulations may make different provision for different purposes or areas and also supplementary, incidental, transitional or saving provision. Subsections (3) to (5) set out the Parliamentary procedure to be followed for regulations under the Act which will either follow the “negative procedure”, the “affirmative procedure” or the “made affirmative” procedure. Where regulations made by the Secretary of State are subject to the negative resolution procedure, they are subject to annulment in pursuance of a resolution of either House of Parliament. Where such regulations are subject to the affirmative resolution procedure, a draft of the regulations must be laid before Parliament and approved by a resolution of each House of Parliament. Regulations subject to the made affirmative procedure will cease to have effect 28 days after the day on which they are made unless approved

by a resolution of each House of Parliament, but this will not affect the validity of anything done under the regulations during that 28-day period.

Section 332: General definitions

821 This section provides information on how terms which are used throughout the Act should be interpreted in the Act. Separate interpretation provisions are found in other Parts of the Act where those terms only appear in those Parts.

Section 333: Extent

822 This section sets out the extent of the Act. Annex A provides further information.

Section 334: Commencement

823 This section sets out when provisions in the Act come into force. Provisions in the Act which are not listed in subsections (2) to (4) will come into force on such a day as the Secretary of State may by regulations appoint. Certain provisions (subsection (2)) come into force on the day on which the Act is passed. Other provisions (subsection (3) come into force at the end of a period of 2 months beginning with the day on which the Act is passed. Section 305 (and Schedule 22) come into force on the day the relevant convention comes into force.

Section 335: Short title

824 This section confirms the short title by which the Act may be cited.

Schedule 1: Interim power of Secretary of State to grant licences

825 This Schedule provides that section 7 to 12 of the Act will have effect subject to the modifications made by the Schedule until the end of the interim period. The effect of these modifications is that during the interim period it is the Secretary of State that will exercise those powers and not the economic regulator. Under the Schedule, the Secretary of State can make regulations setting out the date when the interim period ends i.e., date on which the power to grant licences authorising CO_2 transport and storage activities transfers from the Secretary of State to the economic regulator.

Schedule 2: Procedure for appeals under section 20

826 Schedule 2 establishes the detailed procedure for appeals to the CMA in relation to decisions made by the economic regulator. The Schedule sets out the process by which appeals must be made, matters to be considered by the CMA and timeframes within which the CMA must determine the outcomes.

Schedule 3: Enforcement of obligations of licence holders

827 Schedule 3 provides for the enforcement of conditions or requirements of CO_2 transport and storage licence holders under Part 1, including procedural and other requirements which the economic regulator must comply with. The Schedule sets out the process the economic regulator must follow when it is satisfied that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement and in relation to the imposition of financial penalties for such contraventions.

Schedule 4: Transfer schemes

828 Schedule 4 sets out the scope and obligations for any statutory transfer that is to be made by the Secretary of State.

Schedule 5: Amendments related to Part 1

829 Schedule 5 provides for consequential amendments to the Utilities Act 2000, Enterprise Act 2002, and Enterprise and Regulatory Reform Act 2013, to reflect the functions and powers conferred on the Gas and Electricity Markets Authority as the economic regulator of CO_2 transport and storage under this Act.

Schedule 6: Carbon dioxide storage licences: licence provisions

830 This Schedule amends the standard conditions for CO_2 storage licences under Schedule 1 to the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010. The effect of these amendments is to replace the Oil and Gas Authority's (OGA's) current "after the event" powers in relation to change of control of carbon storage Licensees and permit operators with powers intended to apply before a change of control has taken place.

831 Licensees and permit operators must apply in writing to the OGA for consent at least three months before the planned date of the change of control. Following receipt of an application the OGA may give unconditional or conditional consent or refuse consent to the proposed change of control. If the OGA proposes to grant consent subject to any condition, or to refuse consent, it must give the relevant company the opportunity to make representations and then consider any such representations. This Schedule also gives an indication of the kind of conditions that may be imposed and sets out that notification of the OGA's decision and any conditions must be made in writing to the existing and proposed new Licensees. The OGA must generally decide an application within three months of receiving it, although may delay its decision by notifying the interested parties in writing.

832 This Schedule also makes amendments to the standard conditions in respect of the OGA's powers of revocation and partial revocation, again intended to replace the existing after the event powers with before the event powers.

Schedule 7: Permitted disclosure of material obtained by OGA

833 Schedule 7 establishes the circumstances in which, and to whom, the OGA is permitted to disclose carbon storage information and samples which have been reported to it.

834 Paragraph 1 of the Schedule sets out those public bodies to whom the disclosure of information is permitted. The Secretary of State is able to update this list of public bodies, by way of regulations, should that be appropriate in future.

835 The Schedule also sets out other permitted disclosures, including disclosure where consent has been sought; disclosure for reporting purposes; and disclosure required by other legislation or for the purpose of legal proceedings.

836 Paragraph 4 provides for public disclosure once a pre-defined confidentiality period has passed, which is to be determined in regulations by the Secretary of State. This confidentiality period is to ensure protections are in place for commercially valuable information.

Schedule 8: Carbon storage information and samples: appeals

837 Schedule 8 establishes detailed provisions for appeals against certain decisions of the OGA in relation to carbon storage information and samples. This sets out the grounds on which appeals may be made to the first-tier Tribunal, and the remedies available if an appeal is upheld.

838 Part 1 of Schedule 8 provides for appeals against decisions relating to the preparation of an information and samples plan and appeals against a notice to require information and samples.

839 Part 2 of Schedule 8 provides for appeals to be made by those on whom sanctions notices have been served. These appeals can be brought against a finding that a sanctionable requirement has not been complied with or against the nature of the sanction imposed, for example: the level of a financial penalty.

Schedule 9: Independent System Operator and Planner: transfers

Part 1 – Transfer schemes

Power to make a transfer scheme

840 This schedule empowers the Secretary of State to make transfer schemes to create the ISOP and give it the capacity to carry out its functions.

841 Sub paragraph (2) allows the Secretary of State to make a transfer scheme for energy code bodies. This power is expected to be used to transfer the code administrator Elexon, out of the ownership of the Electricity System Operator, in which it currently resides. This power expires after seven years following when the Act is passed.

Consultation

842 The Secretary of State must consult with the transferor and other bodies as they consider appropriate. Consultation can take place before or after this Act reaches Royal Assent.

Transfer of property, rights and liabilities

843 The transfer of property, rights or liabilities will take place on the date specified in the transfer scheme. A range of things could be included in a transfer scheme, and these are listed.

844 Where a person works for the body being transferred, for example on secondment, but does not have an employment contract with that body, a discretionary power is included to be able to treat that person as having a formal employment contract as part of a transfer scheme. Employees affected by a transfer scheme should have the opportunity to object to a transfer of their employment before the agreed transfer date.

845 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE regulations) protect the rights of employees when they transfer to a new employer. The contracts of the individuals to be transferred to the ISOP will be subject to TUPE regulations wherever they would otherwise be applicable. There are some circumstances under which employees would not usually be caught under (and granted the protection of) the TUPE regulations and paragraph 4 makes a power to extend TUPE protections where this would not naturally occur.

846 The aim is to make it possible for the transfer to the ISOP not to break employees' continuity of employment and their contracts transferred to the ISOP will be treated as if the ISOP was their original employer for this purpose.

847 The transfer scheme may provide that the ISOP honours a collective agreement previously implemented by the existing employer. A collective agreement is when an employer may have an agreement with employees' representatives (for instance a trade union or staff associations) that allows negotiations of terms and conditions like pay or working hours.

848 The precise requirements of the scheme cannot be determined in advance but given the complexity of the initial transfer it is desirable to allow the Secretary of State to make any provisions in the transfer scheme which may be necessary to deal with matters arising. These include unforeseen liabilities which should remain with the transferor, and other examples as described in sub-paragraph 6(1).

Compensation

849 Under paragraph 8, a transfer scheme may provide for the Secretary of State to pay compensation to the transferor as part of any transfer scheme related to the initial establishment of the ISOP or to enable it to carry out its functions and activities. The amount to be paid must be agreed by the Secretary of State and the relevant transferor. If an agreement is not reached, the Secretary of State and the transferor are required to jointly appoint an independent valuer to determine the compensation or, failing this, the Secretary of State can make the appointment on behalf of both parties. The Secretary of State can also nominate a person to act on their behalf.

850 The Secretary of State may by regulations set out the procedures to be followed by the valuer, matters to which the valuer must have regard, or assumptions which the valuer must apply. Provision can also be made to require the Secretary of State and transferor to provide the valuer with information, or regard for a valuation to be binding in specified circumstances.

Taxation

851 Paragraph 9 confers a power on HM Treasury to make regulations to alter how tax is treated in the course of a transfer scheme.

Power to amend transfer scheme

852 The Secretary of State can amend a transfer scheme if they consider that the amendment is appropriate in preparation of the designation of the ISOP, or to enable the ISOP to carry out its functions. The Secretary of State has one year to use this power from the day the relevant transfer scheme takes effect. Compensation may be payable in relation to an amendment to a transfer scheme, and provision is made for determination by an independent valuer if compensation cannot be agreed.

Part 2 – Other provision about transfers and designation

Provision of information or assistance

853 The Secretary of State has the power in connection with the making of a transfer scheme, or the designation of an ISOP, to direct a person to provide information or assistance to the Secretary of State. Requests must be responded to, so far as reasonably practicable, in the time, form and manner specified.

854 The Secretary of State is required to reimburse costs reasonably and efficiently incurred in complying with a direction to provide information or assistance. The Secretary of State is given civil enforcement powers in relation to the requirements. This power expires three years after the ISOP is designated for the first time or, if a transfer scheme is made under paragraph 1(1), three years after the transfer takes effect.

855 The Secretary of State is also given a discretion to reimburse costs reasonably and efficiently incurred in complying with other reasonable requests to provide information to the Secretary of State in connection with designation or the making of a transfer scheme, including those made before the Act receives Royal Assent.

Co-operation

856 There is a duty on certain entities, specified in sub-paragraph (2), to cooperate with the Secretary of State in relation to the establishment of the ISOP.

Third parties: reimbursement and compensation

857 The Secretary of State can reimburse costs reasonably incurred in connection with the initial establishment of the ISOP or the making of a transfer scheme.

858 The Secretary of State may make regulations about payment of compensation to parties other than the transferor where loss or damage has occurred in consequence of a transfer scheme. For example, third parties who have contracts in place with the business being transferred.

Schedule 10: Independent System Operator and Planner: pensions

Introductory

859 As part of the transfer of functions from the incumbent to the ISOP a number of employees will be transferred to the ISOP. Provisions are required to allow the ISOP to support these employees' pension schemes, and to ensure that no value is lost in the transfer of these pension schemes.

Participation in qualifying pension schemes and transfer of assets and rights

860 As the pensions and employment arrangements regarding the creation of the ISOP cannot be determined in advance, this schedule empowers the Secretary of State to make regulations so that pension provisions can be updated, schemes changed, or new schemes created to reflect new corporate structures and the movement of employees. The Secretary of State is required to consult with the trustee of the qualifying pension scheme and the principal employer.

Amendment of qualifying pension schemes

861 The Secretary of State may make regulations to amend a pension scheme, including retrospectively, related to the initial establishment of the ISOP or the making of a transfer scheme under paragraph 1 of Schedule 1. This can include provisions to determine the amount of benefits payable by reference to pensionable service and provisions to allow members to become members of another scheme when a pension scheme is divided into different sections. Any such changes are subject to consultation with the relevant scheme employers and pension scheme trustees.

Protection against adverse treatment

862 The Secretary of State must ensure that the pension provision of employees will be at least as good immediately after the Secretary of State exercises the power to make regulations under this Schedule as it was before. The Secretary of State cannot change a pension scheme that might adversely affect the rights and benefits of its members unless member consent is obtained, or if the amendment is made in a prescribed way.

Information and assistance

863 The Secretary of State has the power to request information or documents to be provided to them by the trustee of a qualifying pension scheme, the relevant person carrying those functions or any current or past employer of a qualifying pension scheme. The Secretary of State must reimburse costs reasonably and efficiently incurred by a person in responding to such a request. This power expires three years after the ISOP is designated for the first time or, if a transfer scheme is made under paragraph 1(1), three years after the transfer takes effect.

864 The request must be responded to, as far as possible, in the time, form and manner specified in the notice. Where reasonable requests for information are not complied with, enforcement action is made available.

Consultation

865 Any consultation required under this Schedule can be carried out before or after the Act receives Royal Assent.

Schedule 11: Minor and consequential amendments relating to Part 5

866 Consequential amendments are needed to the Gas Act 1986 and Electricity Act 1989 to enable the ISOP, and its licensable activities, to be integrated into the existing framework of the energy system regulated by Ofgem. Paragraph 8 makes consequential amendments to the 'information gateway' provisions of Utilities Act 2000, to ensure that information obtained using powers under Part 4 is appropriately protected.

Schedule 12: Governance of gas and electricity industry codes: transitional provision

Meaning of "qualifying document", "qualifying contract" and "qualifying central system"

867 This paragraph empowers the Secretary of State to create lists of documents, contracts and central systems that the transitional powers in this Schedule can be applied to. It also defines relevant terms.

Purpose for which powers under this Schedule may be exercised

868 This paragraph limits the scope of the transitional powers granted in this Schedule so that they cannot be used for anything other than their intended purpose.

Expiry of powers under this Schedule

869 The transitional powers in this Schedule are intended to be temporary in nature. They can expire in one of two ways: on a code-by-code basis, once all the transitionary changes have been made in relation to that specific code; or after a period of seven years, if earlier, for any codes that have yet to complete their transition process. This means that the transitional powers may remain active for some codes longer than they do for others, depending on how the reforms are sequenced by the GEMA.

Modification of qualifying documents and relevant licences

870 To implement code reform, it will be necessary for the GEMA to modify documents and licence conditions. This section gives the GEMA such powers and details the processes it must follow when using them, including who must be consulted and informed.

Amendment or termination of qualifying contracts

871 To implement code reform, it may be necessary for the GEMA to amend or terminate existing contracts of parties that are currently engaged in activities related to energy code governance. For example, it may be necessary to amend the contracts of parties that operate central systems so that they are able to recover any costs efficiently incurred when complying with a direction from the GEMA. This section gives the GEMA such powers and sets out the processes it must follow when using them, including who must be consulted and informed.

Arrangements in connection with code consolidation

872 The transition to the new code governance framework may involve a period of code consolidation, in which one or more of the existing codes may be merged together, or into one or more new codes. Two of the existing codes, the Uniform Network Code and the Balancing and Settlement Code, are central to the operation of the gas and electricity markets. If either of these codes were to be merged into the other, there is a risk that the underpinning of the associated market would cease to exist as a result. To avoid this problem, this section grants the GEMA the power to create a scheme that would allow contracts established under one or more existing codes to be merged into contracts established under one or more newly consolidated codes, without any risk of disruption.

Transfer schemes

873 The transition to the new code governance framework may require staff, physical IT assets and service contracts to be moved from one organisation to another. In some cases, the transfer of the relevant item might be agreed between the various parties, such as the outgoing code administrator and the incoming code manager, but a negotiated outcome cannot be guaranteed. This section therefore grants the GEMA the power to create transfer schemes for the purposes of implementing code reform, which will allow it to ensure that the newly created code managers will have all the things that they need to do their jobs. It also describes the processes that the GEMA will need to follow when using this power, including a requirement to obtain approval for each scheme from the Secretary of State.

Information

874 This part of the Schedule grants the GEMA the power to obtain information from any person if it is required for the purpose of implementing code reform.

Compensation

875 The code governance reforms may have an adverse financial impact on certain parties, for example those who have lost contracts or employees. This provision establishes a duty for the relevant code manager to compensate persons as required. It also describes how claims for compensation related to the use of these powers will be handled, as well as who is eligible to claim compensation. The Secretary of State may in each case give a direction on who is to pay compensation if it is not appropriate for the code manager to pay.

Other

876 This provision is self-explanatory.

Schedule 13: Governance of gas and electricity industry codes: pensions

Introductory

877 This paragraph sets out the power for the GEMA to create transfer schemes that will allow it to move employees from an existing organization, such as a code administrator, to an incoming code manager. To ensure that the pension provisions in respect of these employees are not adversely affected by this transfer, there may be a need to make consequential changes to their pension schemes. This paragraph defines the key terms that are used throughout this schedule, for example what is meant by a qualifying member (i.e., a past or present member of a qualifying pension scheme) or a qualifying pension scheme (i.e., a pension scheme which provides pensions or other benefits to employees of the transferring organization).

Participation in qualifying and other pension schemes

878 This paragraph allows the GEMA to make regulations so that it can make different kinds of provisions in relation to qualifying pension schemes in preparation for the granting of a code manager licence. Examples include provision for the division and reallocation of assets within a pension scheme and enabling participation in the scheme by specific persons. Under this paragraph, the GEMA is obliged to consult with appropriate parties. The making of these regulations is subject to the approval of the Secretary of State.

Amendment of qualifying pension schemes

879 This paragraph enables the GEMA to make regulations to amend qualifying pension schemes in cases where staff will need to be transferred between organisations in preparation for the granting of a code manager licence. Examples of potential amendments include provision for the transfer of assets, rights, liabilities or obligations between relevant pension schemes. Under this paragraph, the GEMA is obliged to consult with appropriate parties. The making of these regulations is subject to the approval of the Secretary of State.

Protection against adverse treatment

880 This paragraph outlines the GEMA's duty to ensure that qualifying members of affected pensions schemes are not adversely impacted in material terms in respect of their pension provisions as a result of these reforms. This paragraph also sets out that the GEMA's power to amend qualifying pension schemes under this provision is subject to the prescribed consent requirements in those pension schemes.

Information

881 This paragraph grants the GEMA the power to obtain relevant information in relation to a qualifying pension scheme from any person if it relates to the benefits or administration of such a pension scheme, with such powers enforceable in civil proceedings.

Schedule 14: Minor and consequential amendments: Part 6

Gas Act 1986

882 Paragraphs 1 to 4 amend the Gas Act 1986 to ensure that the bodies responsible for operating a designated central system (i.e., an IT system connected with the maintenance, operation, or data storage of a designated document) are treated as regulated persons when subject to a direction from the GEMA under section 194 of this Act. This amendment will allow the GEMA to use its enforcement powers if the responsible body in question fails to comply with a direction.

Electricity Act 1989

883 Paragraphs 5 to 8 amend the Electricity Act 1986 to ensure that the bodies responsible for operating a designated central system (i.e., an IT system connected with the maintenance, operation, or data storage of a designated document) are treated as regulated persons when subject to a direction from the GEMA under section 194 of this Act. This amendment will allow the GEMA to use its enforcement powers if the responsible body in question fails to comply with a direction.

Energy Act 2004

884 The GEMA is responsible for deciding whether to approve major changes to the energy codes. Paragraphs 9 to 11 make two amendments to the Energy Act 2004 related to how appeals of these decisions are handled. First, it extends the timeline of relevant appeals from one month to four months to bring it in line with appeals of other Ofgem decisions, such as licence modifications.

Second, it adds decisions made by the GEMA in connection with the direct modification of designated documents power granted by sections 192 of the Energy Act 2023 to the list of decisions that can be appealed to the CMA.

Energy Act 2023

885 Paragraph 12 amends section 89 of the Energy Act 2023 to provide the Secretary of State with the power to modify a code manager licence under section 7AC of the Gas Act 1986, as well as documents maintained in accordance with conditions of such a licence (such as industry codes) or agreements that give effect to such documents, for the purpose of facilitating or supporting the administration and/or enforcement of a hydrogen levy.

Schedule 15: Competitive tenders for electricity projects

Part 1 – Amendments of Electricity Act 1989

886 Paragraph 1 of the Schedule provides that the amendments described by the subsequent paragraphs are made to the Electricity Act 1989 ("the Act").

887 Paragraph 2 adds two new sections to the Act. The first enables the Secretary of State to make regulations setting criteria to be applied to electricity projects to determine their eligibility for competitive tenders, which in turn allows for competition to be enabled in respect of certain electricity projects. 'Relevant electricity project' is defined for that purpose. The second enables the Secretary of State to appoint a 'delivery body' to run tenders for electricity projects, both onshore and offshore. The Secretary of State may appoint different bodies to run different types of competition (for example, for onshore and offshore networks, where appropriate). It will also allow for the Secretary of State to indemnify a delivery body, where that body is not the Authority (Ofgem), for cost incurred in association with any judicial review proceedings brought against them in relation to a competitive tender under this Part of the Act.

888 Paragraph 3 substitutes existing sections 6C and 6D of the Act with five new sections. New section 6C enables the Authority to make regulations to facilitate tenders ("tender regulations"). The other four new sections set out the scope of what tender regulations may cover. This includes functions and powers of the Authority (Ofgem) and the delivery body, the methodology for tenders, and the recovery by the Authority and/or delivery body of costs expended in association with tenders. In order to allow for effective tenders, tender regulations may also include provision for the Authority, delivery body and a contract counterparty to seek information which is relevant to tenders. New section 6CC of the Act details the treatment of connection applicants.

889 Paragraph 4 amends section 6E of the Electricity Act 1989 to allow property schemes created in furtherance of a competition run under this part of the Act to cover onshore network solutions as well as offshore tenders. Property schemes allow for the creation or transference of property, rights or liabilities necessary for the preferred and/or successful bidder to deliver the outcome of the competition.

890 Paragraphs 5 and 6 amend sections 6F and 6G of the Act respectively to allow for transmission to take place during a commissioning period without the person undertaking the activity needing a transmission licence.

891 Paragraph 7 amends section 6H of the Act to give the Authority (Ofgem) the ability to amend licences and codes to give effect to the outcome of competitions onshore as well as offshore.

892 Paragraph 8 amends section 11A of the Act. Section 11A sets out the process to modify conditions under licences granted by the Authority (Ofgem). This amendment clarifies that this general

process to modify conditions does not apply to modification of conditions of licences following a competition. For this scenario, new section 6CC(5)(a) (set out in paragraph 2 of Schedule 5) applies and sets the process for such modifications.

893 Paragraph 9 amends section 64 of the Act, which sets out definitions used in this Part of the Electricity Act 1989, to include definitions introduced by this legislative measure.

894 Paragraphs 10 to 26 amend Schedule 2A of the Act to cover onshore as well as offshore electricity networks in terms of property schemes.

895 Paragraph 11 enables the Authority (Ofgem) to make a property scheme which allows for the creation or transfer, as is relevant, of rights, liabilities and property necessary or expedient for operational purposes to enable delivery of the outcome of a competitive tender in onshore electricity networks.

896 Paragraph 12 clarifies that a property scheme should not be created if the Authority (Ofgem) considers it appropriate that the successful bidder obtains the relevant rights, liability and property by another route.

897 Paragraph 13 revokes paragraph 5 of Schedule 2A of the Act. This was a sunset provision, which limited property schemes to the transitional period after offshore competition sections of the Energy Act 2004 were introduced.

898 Paragraph 14 makes amendments to paragraph 12 of Schedule 2A to allow property schemes (as described above) made under Schedule 2A to cover scenarios of construction and commissioning of an asset, as well as operation. This gives effect to onshore competition where early or late model competitions are used; that is, competition before or after planning permission for the build, ownership and operation of a network solution. This extends from the current regime for offshore networks, which only allows for very late model competition, where only the ownership and operation of an asset which is already built is tendered for.

899 Paragraph 15 clarifies that no property scheme can be made until the relevant licence or contract (as appropriate to the winning solution) is in place.

900 Paragraphs 16 to 20 make amendments to other paragraphs in Schedule 2A in the same way as set out in Paragraph 14 for paragraph 12 of Schedule 2A, so that Schedule 2A can be used in onshore as well as offshore competition.

901 Paragraph 21 amends Paragraph 35 of Schedule 2A: paragraph 35 now sets out notification procedures for the Authority (Ofgem) or a contract counterparty to notify of its intent to grant a licence and/ or grant a contract to the winning bidder. The amendment extends the current paragraph 35 from just the Authority's notification to a contract counterparty's notification. This gives effect to competition to allow for licensable and non-licensable solutions as an outcome of onshore competition.

902 Paragraph 22 amends paragraph 36, which sets out processes and definition of a successful bidder, to cover onshore and offshore competition, and licensable and non-licensable solutions.

903 Paragraph 23 inserts a new paragraph providing the Authority (Ofgem) with powers to appoint a transmission owner or distribution owner of last resort in the event that the winning bidder's solution or the owner is unable to continue functioning under the terms of its contract and/or licence.

904 Paragraph 24 amends definitions used in Schedule 2A of the Act to refer to onshore and offshore competitions.

905 Paragraph 25 amends paragraph 6 in Schedule 4 of the Act to allow for winners of onshore competition exercises to be included in provisions regarding powers of licence holders.

Part 2 – Other amendments

906 Paragraph 26 amends section 105 of the Utilities Act 2000 to allow disclosure of information protected under that section by a contract counterparty, the Authority or delivery body if required to deliver functions set out in the Act (as amended by these provisions) and regulations made under new section 6C of the Electricity Act 1989.

Schedule 16: Mergers of energy network enterprises

Part 1: Further duties of Competition and Markets Authority to make references

Paragraph 1: Amending Part 3 of the Enterprise Act 2002

907 This paragraph is self-explanatory.

Paragraph 2: Insertions following section 68 of the Enterprise Act 2002

908 Paragraph 2 inserts sections 68A to 68F into Part 3 of the Enterprise Act 2002.

909 Section 68A defines what amounts to an energy network merger for the purposes of the regime for mergers of energy network enterprises (referred to in these Explanatory Notes as the energy networks special merger regime). Relevant energy network mergers will be considered by the CMA under the energy networks special merger regime.

910 An energy network merger is a merger between energy network enterprises that hold the same type of licence. Energy network enterprises within scope of the energy networks special merger regime are defined by virtue of the licence they hold under the licensing regime in Great Britain. For example, a merger between two Distribution Network Operators (DNOs), who both hold a licence under section 6(1)(c) of the Electricity Act 1989 would qualify as a relevant merger situation.

911 This section includes a power for the Secretary of State to amend the type of enterprise that is considered as an energy network enterprise by reference to the type of licence it holds. If the Secretary of State relies on this power, they must consult with the CMA and GEMA. The Government expects Ofgem to carry out the duties bestowed on GEMA.

912 The Enterprise Act 2002, which will be amended to include the energy networks special merger regime, has UK wide extent and thus the energy networks special merger regime will form part of the law of the UK. The energy networks special merger regime will only apply in England, Wales and Scotland because under section 68A, the only enterprises that will be in scope of the regime are energy network enterprises holding certain licences under s.7 of the Gas Act 1986 or s.6 of the Electricity Act 1989. The relevant provisions of both the Gas Act 1986 and the Electricity Act 1989 extend to and apply in Great Britain.

913 Section 68B confers a duty on the CMA to refer a completed energy network merger to a full investigation by a CMA group if they think that a certain type of substantial prejudice has occurred or may occur.

914 The CMA will consider, whether the merger has substantially prejudiced, or may substantially prejudice, the independent energy regulator, GEMA, in its ability to carry out its functions to make comparisons between energy network enterprises of the type involved in the merger. If the CMA concludes that it has, or may, result in substantial prejudice, then the CMA comes under the duty to refer unless the CMA believes that there is a customer benefit that outweighs the prejudice.

915 This section provides that the CMA must not make a reference in certain circumstances (set out in section 22(3) Enterprise Act 2002). The CMA must not make a reference for full investigation where:

- it has failed to make a decision on referral within 40 working days (subject to an extension of 20 working days in certain circumstances) from the date it notified the merging enterprises of its initial investigation,
- an undertaking in lieu of referral for full investigation has been accepted,
- the CMA is considering whether to accept an undertaking in lieu, and
- the Secretary of State has served an intervention notice under section 42(2) of the Enterprise Act 2002, because the energy network merger raises a public interest consideration that needs to be taken into account, and this intervention notice is in force or has been determined. This is provided the Secretary of State has not asked the CMA to deal with the merger under section 68B.

916 Section 68B also provides that the referral to full investigation must specify the enactment under which it is made, and the date on which it is made.

917 Section 68C confers a duty on the CMA to refer an anticipated energy network merger (a merger which is in progress or contemplation but not completed) to a full investigation by a CMA group if they think that a substantial prejudice may occur.

918 Everything listed in the explanatory note for section 68B (on when the CMA must refer, may refer and must not refer a merger to full investigation) also applies to anticipated mergers under section 68C, save that, if an intervention notice is served then the CMA must not refer the merger for a full investigation unless the Secretary of State has asked the CMA to deal with the merger under section 68C.

919 Section 68C also provides, in respect of an anticipated merger, that the CMA is not obliged to refer the merger for full investigation where it is not sufficiently advanced or sufficiently likely to go ahead as to justify being investigated at this stage.

920 Section 68D requires the CMA to consider the opinion of GEMA when forming a view on whether to refer the energy network merger for full investigation by a CMA group. The Government expects Ofgem to carry out the duties bestowed on GEMA.

921 Subsection (2) provides that GEMA must give its opinion on whether and to what extent the merger has or may be expected to prejudice its ability to make comparisons between energy network enterprises of the type involved in the merger and whether any prejudice is outweighed by any relevant consumer benefits the merger may result in.

922 GEMA must prepare and publish a 'statement of methods' which explains how it will form its opinion.

923 GEMA must consult on the 'statement of methods' before preparing or altering it. Subsection (5) includes a list of statutory consultees. There is no obligation on the consultees to respond to the consultation.

924 The statement of methods must include the criteria that GEMA will use to assess prejudice and the relative weight of the criteria.

925 GEMA must from time to time review the statement of methods and where appropriate, update it.

926 Section 68E makes provision for where a merger falls within scope of both the energy networks special merger regime, and the substantial lessening of competition regime. In this situation, the CMA may make a reference under both regimes, described as a “combined reference”.

927 This section sets out that combined references (i.e., investigations) may be dealt with and considered by the same group in the CMA.

928 The group(s) investigating the merger is/are empowered to prepare and provide a joint report which sets out its/their findings on both the referrals. They do not have to issue a joint report if they deem it more appropriate to issue single reports.

929 Section 68F sets out that in relation to references made under the provisions in sections 68B and 68C (with related provisions in sections 68A to E), Chapter 1 of Part 3 of the Enterprise Act 2002 applies in conjunction with the modifications set out in Schedule 5A to the Enterprise Act 2002.

Paragraph 3: Insertion of Schedule 5A to the Enterprise Act 2002, Modification of Chapter 1 of Part 3

930 This paragraph provides modifications which should be read into certain sections in Chapter 1 of Part 3 of the Enterprise Act. Modifications, as opposed to amendments, mean that, while certain sections are not directly amended on their face, they should be read as if they have been when a merger is being considered under the energy networks special merger Regime. For example, under paragraph 4 of Schedule 5A, in section 30 on relevant customer benefit (which sets out when a benefit is to be deemed a relevant consumer benefit under the substantial lessening of competition regime) references to “lessening of competition concerned” should be read as “prejudice to the Gas and Electricity Markets Authority” when a merger is being considered under the energy networks special merger regime.

931 The modifications set out in this paragraph relate to the following points: (1) General modifications; (2) Turnover test; (3) Relevant customer benefits; (4) Time limits for decisions about references; (5) Questions to be decided in relation to completed mergers; (6) Questions to be decided in relation to anticipated mergers; and (7) Duty to remedy effects of completed or anticipated mergers. These modifications are all to address the details of the energy networks special merger regime.

932 Paragraphs 2 and 3 of Schedule 5A modify sections 23 and 28 of the Enterprise Act 2002 to ensure that the turnover threshold which determines which energy network enterprises are within scope of the energy networks special merger regime, only takes account of an enterprise’s turnover in Great Britain, rather than the United Kingdom. This reflects the policy position that the energy networks special merger regime will apply only to energy network enterprises that operate under the licensing regime in Great Britain.

Part 2: Consequential amendments of Part 3 of Enterprise Act 2002

933 Paragraphs 4 through 34 set out the Consequential Amendments to Part 3 of the Enterprise Act 2002.

Part 3: Consequential amendments of other enactments

934 Paragraphs 35 and 36 set out the Consequential Amendments to the Enterprise and Regulatory Reform Act 2013 and Utilities Act 2000.

Schedule 17: Multi-purpose interconnectors: consequential amendments

935 This schedule sets out the consequential amendments to the Electricity Act 1989 and other primary legislation which the introduction of multi-purpose interconnector licensing will necessitate.

Schedule 18: Heat networks regulation

Part 1 – Interpretation

936 This part provides a definition of various terms used elsewhere in the Schedule.

Part 2 – General provision as to the Regulator

937 This part sets out what regulations may provide for in relation to the objectives of the heat networks regulator, its general duties and the publication of reports and maintenance of records. Regulations may include the regulator's principal objective of protecting existing and future heat network consumers. The part also sets out what regulations may provide for in relation to the duties and functions of the regulator.

Part 3 – Heat network authorisations

938 This part sets out what regulations may provide for in relation to authorising activities relating to heat networks, including that certain activities (examples might be operating a heat network or supplying heat through a heat network) are prohibited without an authorisation. This part also sets out the subject matter of conditions that may be included in authorisations, for example: regarding compliance with technical standards, consumer protections on pricing, standards of service, and payment of fees to the regulator. Regulations may also provide for such authorisations to be modified, reviewed and/or revoked.

Part 4 – Code governance

939 This part sets out what regulations may provide for regarding the designation of a code or other document setting out, for example, the technical standards of how to design, build or operate a heat network. It also provides that a 'code manager' may be appointed with responsibility for the management and governance of such documents, in accordance with a code manager licence. Regulations may also specify the content of a code manager licence and set out the circumstances and process by which designated documents and conditions of a code manager licence may be modified.

Part 5 – Installation and maintenance licences

940 This part sets out what regulations may provide for regarding the issuance of licences which grant rights relating to the installation and maintenance of heat networks. These rights may include access rights and easements in relation to land, streets, railways, waterways, and tramways. Regulations may also set out provisions in relation to licence fees and the validity period of licences, as well as their transfer, modification, review, and revocation.

Part 6 – Enforcement of conditions and requirements

941 This part sets out what regulations may provide for regarding the regulator's enforcement powers in respect of non-compliance by authorised or licensed parties (as discussed in Parts 3 and 5 respectively). In particular, the regulations may provide for the process and circumstances by which the regulator issues provisional and final enforcement orders, financial penalties, and consumer redress orders. The regulations may also provide for how parties may challenge

enforcement actions imposed. This part also allows for the provision of concurrent competition law powers to the regulator.

Part 7 – Investigation

942 This part sets out what regulations may provide for regarding the regulator's powers to investigate cases where prices charged to heat networks consumers appear to be disproportionate. Regulations may provide for the information that may be requested by the regulator and the steps that it may take to support its regulatory functions in relation to pricing and more generally (e.g., in relation to consumer protection, decarbonisation, and technical standards). It also allows for the regulator to delegate its investigatory powers to another party.

Part 8 – Step-in arrangements

943 This part sets out the provisions that regulations may include regarding the transfer of responsibility for heat network activity from one authorised entity ('the old entity') to another ('the new entity'). In particular, regulations may provide for the regulator to establish one or more schemes which allow the new entity to carry out the transferred activity in an effective manner. Regulations may also provide for the old entity to provide the regulator with such information and assistance as is required, for the regulator to direct the old entity to take or not take certain steps, for the regulator to make payments to the new entity and to indemnify the new entity from certain liabilities.

Part 9 – Special administration regime

944 This part sets out that regulations may provide for the introduction of a special administration scheme for heat network operators, similar to that which operates for gas transporters and electricity transmission and distribution network operators (as introduced in sections 157 to 171 of the Energy Act 2004).

Part 10 – Supply to premises

945 This part sets out what regulations may provide for in relation to heat metering, including duties on authorised entities to install heat meters and powers for authorised entities to enter premises to carry out activities related to metering. The part also sets out that regulations may provide duties on authorised entities in relation to offering heat networks connections (whether for the supply of heat, cooling or hot water to premises or the supply of heat to a heat network).

Part 11 – Consumer protection

946 This part sets out that regulations may provide for the heat networks regulator to make regulations prescribing standards of performance affecting heat network consumers. For example, the regulations may provide for compensation to be paid to consumers affected by a failure by an authorised entity to meet a standard of performance. This part also sets out that regulations may provide for various Parts of the Consumers, Estate Agents and Redress Act 2007 to apply in relation to heat network consumers. This will allow for the operating of a consumer advocacy body and provision about complaints handling and redress schemes (in a similar way to the gas and electricity markets) for heat network consumers.

Part 12 – Financial arrangements

947 This part sets out that the regulations may make provision in authorisation conditions (as discussed in Part 3 of this Schedule) regarding payments to support financial assistance under the special administration regime envisaged by Part 9 and payments to bodies who provide consumer advocacy and advice to heat network customers.

Part 13 – Miscellaneous and general

948 This part sets out that regulations may provide for the creation of offences and related matters, including around requirements to provide information. It sets out that regulations may provide for the objectives of the Secretary of State and the Department of the Economy in Northern Ireland when carrying out their functions. It also allows regulations to provide for application to the Crown.

Schedule 19: Licensing of activities relating to load control

949 Schedule 17 inserts the following new sections into the Electricity Act 1989:

- 56FBA New licensable activities: load control of energy smart appliances
- 56FBB Regulations made under section 56FBA.

Section 56FBA: New licensable activities: load control of energy smart appliances

950 Section 56FBA gives the Secretary of State the power to make regulations which add to the activities that are licensable under the Electricity Act 1989 any one or more new activities which are connected with the carrying on or facilitating of load control or the provision of services of facilities for that purpose. This will ensure that licence conditions can be placed on organisations undertaking those activities, so that they can be effectively regulated. An example of load control activity which could be made licensable is where an entity manages energy smart appliances to shift electricity consumption and help balance the electricity grid. Licence conditions may include, for example, ensuring that load controllers operate in a way which protects the security and stability of the electricity system, and act in a fair manner towards consumers.

951 Once activities become licensable, it will be an offence under section 4(1) of the Electricity Act to undertake them without a licence, unless they are made exempt by virtue of an order under section 5(1) of that Act.

952 The regulations can also include any necessary consequential, transitional, incidental or supplementary changes to primary legislation. This will enable the Secretary of State to make any amendments necessary to ensure that the new licences fit within the existing statutory framework. The Secretary of State may also make transitional provisions relating to anyone who is already carrying out a relevant activity before it becomes licensable (for instance, to allow them time to adjust to the new arrangements and comply with licence conditions that will be placed on them).

Section 56FBB: Regulations made under section 56FBA

953 This section sets out the procedure with which the Secretary of State must comply when making regulations under section 56FBA. For example, it obliges the Secretary of State to consult the Authority and others as appropriate before making the regulations. The section states that the power to make regulations cannot be exercised after the end of a period of seven years, beginning when the first regulations come into force. Regulations to introduce a new licensable activity are subject to the affirmative resolution procedure.

954 This section also amends section 56FC(2) of the Electricity Act 1989 to give the Secretary of State power to make regulations providing for the award of a licence through competitive tender to a person who will provide these centralised services by extending the existing relevant power within the Electricity Act to include load control activities. The Secretary of State may wish to ensure the establishment of a centralised body that will provide data and/or communication services to all of those who hold licences in relation to the provision of load control, and through which communications with relevant smart devices must or may be made.

955 It also amends section 106(2) of the Electricity Act to exempt new licensable activities regulations from being subject to the negative parliamentary process (since they are instead subject to the affirmative process by virtue of 56FBB(3)).

Schedule 20: Enforcement undertakings

956 For the purposes of Part 12, this Schedule provides as to how the procedure to be followed concerning enforcement undertakings (section 3) is to be published. It sets out how an enforcement undertaking can be varied and how to certify that it has been complied with, the steps to take if the undertaker provides inaccurate, incomplete or misleading information, and the appeals procedure.

Schedule 21: Petroleum licences: amendments to model clauses

957 This Schedule amends all model clauses regarding the change of control of a Licensee in possession of any current and future Seaward Petroleum Production licences and all Landward Petroleum Production licences (but not Landward or Seaward Exploration Licences), to replace the Oil and Gas Authority (OGA) after the event powers with powers intended to apply before a change of control has taken place.

958 It sets out that if a change of control of a petroleum Licensee is contemplated, the Licensee must apply in writing to the OGA for consent at least three months before the planned date of the change of control. Following receipt of an application the OGA may give unconditional or conditional consent or refuse consent to the proposed change of control. If the OGA proposes to grant consent subject to any condition, or to refuse consent, it must give the relevant company the opportunity to make representations and then consider any such representations. This Schedule also gives an indication of the kind of conditions that may be imposed and sets out that notification of the OGA's decision and any conditions must be made in writing to the existing and proposed new Licensees. The OGA must generally decide an application within three months of receiving it, although may delay its decision by notifying the interested parties in writing.

959 This Schedule also introduces amendments in respect of the OGA's powers of revocation and partial revocation, again intended to replace the existing after the event powers with before the event powers.

Schedule 22: Accession to the Convention on Supplementary Compensation for Nuclear Damage

960 This Schedule amends the Nuclear Installations Act 1965 (the Act) to make provision for the UK's intended accession to the CSC.

Paragraph 1

961 Paragraph 1 amends section 13 of the Act, to ensure that in the event that a person not subject to a duty under the Act pays compensation, they are able to claim under the Act against the holder of the duty. As previously noted, the UK is already party to the Paris and Brussels Conventions regarding nuclear third-party liabilities and this provision currently applies in respect of those Conventions.

Paragraphs 2 and 3

962 Paragraph 2 amends section 16 of the Act. This section sets the liability limits of operators or licensees in respect of any breach of the duties set out in the Act, as well as the parameters for claims against the "appropriate authority" (in most cases, the Secretary of State).

963 At present, the Act distinguishes between claims arising from states that are party to the Paris Convention, and those arising from states that are also party to the Brussels Convention. The addition of the CSC into the UK's nuclear third-party liability landscape necessitates amendment to this classification system. The classification of the claim affects the maximum level of compensation available, and how the amount is comprised under the different regimes.

964 Subparagraph (2) removes payments that are limited to CSC relevant claims from the limit of £700 million for a breach of Paris Convention duties imposed by the Act. Subparagraph (3) specifies that the liability limit imposed on operators under claims which relate only to the CSC is 300 million Special Drawing Rights (SDR – which are defined in paragraph 6).

965 Subparagraphs (6) and (7) set out the various liability limits on the Scottish Ministers or Secretary of State, as applicable, for the different types and combinations of potential claims under the Paris, Brussels and CSC treaties. Subparagraph (7) also provides for restrictions on the distribution of the CSC international pooled fund. Only 50% of the fund can be used to satisfy domestic CSC claims, with the remaining 50% reserved for the compensation of claims originating in other CSC countries.

966 Subparagraphs (4), (5), (8) and (9), and paragraphs 3 and 5 make the necessary consequential amendments to reflect the above changes to section 16 of the Act.

Paragraph 4

967 Paragraph 4 inserts a new section into the Act (section 16AA). This section defines a number of terms related to CSC claims for the purposes of the amended section 16.

968 Subsection (1) of the new section 16AA clarifies that this section applies for the purposes of section 16. Subsections (2) and (3) set out the required elements to establish a "CSC claim".

969 Subsections (4) to (6) build upon subsection (3) by defining when a CSC claim is a "CSC-only claim". As subsection (5) sets out, a claim becomes CSC-only when the injury, damage or significant impairment of the environment occurs solely within the territory, or related territory/property, of a CSC-only territory. Subsection (6) defines a "CSC-only territory" as one which is not: the UK, a CSC country that is party to any other international nuclear third-party liability agreement, a non-nuclear country (or overseas territory of such country) or a relevant reciprocating territory.

970 Subsections (7) and (8) define a "non-UK CSC claim", with reference to injury, damage or significant impairment of the environment that occurs in a CSC territory (or related territory/property) other than the UK.

971 Subsection (9) contains further definitions relevant to this section.

Paragraph 6

972 Paragraph 6 (subparagraph (2)) amends section 18 of the Act to increase the value of funds able to be agreed by Parliament to the aggregate value of the Paris and Brussels Conventions (including the Brussels international pooled fund (1,500 million euros)) and the CSC international pooled fund.

973 Subparagraphs (3) and (4) make the necessary consequential amendments to section 18 to reflect these changes.

Paragraph 7

974 Paragraph 7 inserts a new section (25C) to define the term "special drawing rights" and provides for the determination of the equivalent amount in sterling; the conversion is to be undertaken in line with the International Monetary Fund's fixed rates, and a certificate from the Treasury stating that a particular conversion rate has been fixed in this way is to be considered conclusive on this question. The Treasury may charge a reasonable fee for providing such a certificate.

Paragraph 8

975 Paragraph 8 inserts certain of the new definitions relating to the CSC into section 26, the interpretation section of the Act, as well as making consequential provision for certain existing definitions so that they apply in relation to the CSC.

Commencement

976 Section 334 makes provision about when the provisions of this Act will come into force.

Related documents

977 The following documents are relevant to the Act and can be read at the stated locations:

- British Energy Security Strategy, https://www.gov.uk/government/publications/british-energy-security-strategy/british-energy-security-strategy
- The Queen's Speech 2022: Background briefing notes, https://www.gov.uk/government/publications/queens-speech-2022-background-briefing-notes
- Energy white paper: Powering our net zero future, https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future
- The Ten Point Plan for a Green Industrial Revolution, https://www.gov.uk/government/publications/the-ten-point-plan-for-a-green-industrial-revolution
- Powering Up Britain, https://www.gov.uk/government/publications/powering-up-britain

Annex A – Territorial extent and application

Provision	England	Wales	Scotland	Northern Ireland
	Extends to E & W and applies to England?	**Extends to E & W and applies to Wales?**	**Extends and applies to Scotland?**	**Extends and applies to Northern Ireland?**
Part 1: *Licensing of Carbon Dioxide Transport and Storage*				
Sections 1 – 35, Schedule 1 – 3	Yes	Yes	Yes	Yes
Sections 36 – 38	Yes	Yes	Yes	Yes
Sections 39 – 41	Yes	Yes	Yes	Yes
Sections 42 – 49	Yes	Yes	Yes	No
Sections 50 – 52 Schedule 4	Yes	Yes	Yes	Yes
Sections 53 – 55 Schedule 5	Yes	Yes	Yes	Yes
Part 2: *Carbon Dioxide Capture, Storage etc and Hydrogen Production*				
Sections 56 – 87	Yes	Yes	Yes	Yes
Sections 88 – 91	Yes	Yes	Yes	Yes
Sections 92 – 98	Yes	Yes	Yes	Yes
Sections 99 – 102	Yes	Yes	Yes	Yes
Sections 103 – 106 Schedule 6	Yes	Yes	Yes	Yes
Sections 106 – 128 Schedule 7 – 8	Yes	Yes	Yes	Yes
Part 3: *Licensing of Hydrogen Pipeline Projects*				
Sections 130 – 142	Yes	Yes	Yes	No
Part 4: *New Technology*				
Sections 143 – 152 (Low Carbon heat schemes)	Yes	Yes	Yes	Yes
Sections 153 – 154 (Hydrogen grid conversion trials)	Yes	Yes	Yes	No
Sections 155 (power to modify Gas Act 1986)	Yes	Yes	Yes	No
Section 156 (Fusion energy facilities)	Yes	Yes	Yes	Yes
Section 157 (recycled carbon fuel etc.)	Yes	Yes	Yes	Yes
Section 158 (revenue certainty scheme for SAF)	Yes	Yes	Yes	Yes
Section 159 (Renewable Liquid Heating Fuel obligations amendment)	Yes	Yes	Yes	No
Section 160 (Climate Change Act – meaning of UK removals)	Yes	Yes	Yes	Yes
Part 5: *Independent System Operator and Planner*				

Provision	England	Wales	Scotland	Northern Ireland
	Extends to E & W and applies to England?	**Extends to E & W and applies to Wales?**	**Extends and applies to Scotland?**	**Extends and applies to Northern Ireland?**
Sections 161 – 181 Schedule 9 – 11	Yes	Yes	Yes	No
Part 6: *Governance of Gas and Electricity Industry Codes*				
Sections 182 – 201 Schedule 12 – 14	Yes	Yes	Yes	No
Part 7: *Market Reform and Consumer Protection*				
Section 202 (principal objectives of the Secretary of State and GEMA)	Yes	Yes	Yes	No
Section 203 Schedule 15 (Competitive tenders for electricity projects)	Yes	Yes	Yes	No
Section 204 Schedule 16 (mergers)	Yes	Yes	Yes	
Sections 205 – 210 Schedule 17 (multi-purpose interconnectors)	Yes	Yes	Yes	No
Sections 211 – 212 (support for energy intensive industries)	Yes	Yes	Yes	No
Section 213 (electricity storage)	Yes	Yes	Yes	No
Section 214 (ECO scheme amendments)	Yes	Yes	Yes	No
Section 215 (smart meters)	Yes	Yes	Yes	No
Part 8: *Heat Networks*				
Sections 216 – 222 Schedule 18 (heat networks regulation)	Yes	Yes	Yes	Yes
Section 223 (heat networks: licensing in Scotland)	Yes	Yes	Yes	Yes
Section 224 (heat networks enforcement in Scotland)	No	No	Yes	No
Section 225 (interpretation)	Yes	Yes	Yes	Yes
Sections 226 – 237 (Heat network zones)	Yes	No	No	No
Part 9: *Energy Smart Appliances and Load Control*				
Sections 238 – 249 Schedule 19	Yes	Yes	Yes	No
Part 10: *Energy Performance of Premises*				
Sections 250 – 253	Yes	Yes	Yes	Yes
Part 11: *Energy Savings Opportunity Schemes*				
Sections 254 – 266	Yes	Yes	Yes	Yes
Part 12: *Core Fuel Sector Resilience*				

Provision	England	Wales	Scotland	Northern Ireland
	Extends to E & W and applies to England?	**Extends to E & W and applies to Wales?**	**Extends and applies to Scotland?**	**Extends and applies to Northern Ireland?**
Sections 267 – 289 Schedule 20	Yes	Yes	Yes	Yes
Part 13: *Offshore Wind Electricity Generation, Oil and Gas*				
Sections 290 – 295 (offshore wind)	Yes	Yes	Yes	Yes
Section 296 (arrangements for responding to marine oil pollution)	Yes	Yes	Yes	Yes
Sections 297 – 298 (reducing the effects of offshore oil or gas activities and regulatory procedure for regulations under sections 297 and 298)	Yes	Yes	Yes	Yes
Section 299 (charges in connection with abandonment of offshore installations	Yes	Yes	Yes	Yes
Sections 300 – 301 Schedule 21 change of control licensee)	Yes	Yes	Yes	Yes (in respect of amendments made to legislation which extends to Northern Ireland)
Part 14: *Civil Nuclear Sector*				
Sections 302 (application to territorial sea of nuclear site licence requirement)	Yes	Yes	Yes	Yes
Sections 303 – 306 Schedule 22 (nuclear decommissioning and accession to supplementary nuclear damage compensation Convention)	Yes	Yes	Yes	Yes
Section 307 (provision of additional police services)	Yes	Yes	Yes	Yes (in respect of amendment made by subsection (4))
Section 308 (provision of assistance to other forces)	Yes	Yes	Yes	No
Section 309 (cross-border enforcement powers)	Yes	Yes	Yes	Yes
Section 310 (publication of strategy)	Yes	Yes	Yes	No
Sections 311 – 316 (relevant nuclear pension schemes)	Yes	Yes	Yes	Yes
Sections 317 – 329 (Great British Nuclear)	Yes	Yes	Yes	No
Part 15: *General*				
Sections 330 – 335 (general provisions)	Yes	Yes	Yes	Yes

Annex B – Hansard references

978 The following sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Lords		
Introduction	6 July 2022	Vol. 823 Col. 1013
Second Reading	19 July 2022	Vol. 823 Col. 1884
Committee	5 September 2023	First Sitting Vol. 824 Col. 17
	7 September 2023	Second Sitting Vol. 824 Col. 204
	12 December 2023	Third Sitting Vol. 826 Col. 63GC
	14 December 2023	Fourth Sitting Vol. 826 Col. 137GC
	19 December 2023	Fifth Sitting Vol. 826 Col. 179GC
	16 Jan 2023	Sixth Sitting Vol. 826 Co. 349GD
Report	28 March 2023	First Sitting Vol. 829 Col. 151 – Part 1
		First Sitting Vol. 829, Col. 226 – Part 2
	17 April 2023	Second Sitting Vol. 829 Col. 468
Third Reading	24 April 2023	Vol. 829 Col. 975
House of Commons		
Introduction	25 April 2023	Vol. 731
Second Reading	9 May 2023	Vol. 732 Col. 241
Public Bill Committee	23 May 2023	First Sitting Col. 1
	23 May 2023	Second Sitting Col. 31
	25 May 2023	Third Sitting Col. 63
	6 June 2023	Fourth Sitting Col. 89
	6 June 2023	Fifth Sitting Col. 127
	8 June 2023	Sixth Sitting Col. 149
	8 June 2023	Seventh Sitting Col. 179
	13 June 2023	Eighth Sitting Col. 215
	13 June 2023	Ninth Sitting Col. 247
	15 June 2023	Tenth Sitting Col. 279
	15 June 2023	Eleventh Sitting Col. 301
	20 June 2023	Twelfth Sitting Col. 329
	20 June 2023	Thirteenth Sitting Col. 359
	22 June 2023	Fourteenth Sitting Col. 381
	22 June 2023	Fifteenth Sitting Col. 425
	27 June 2023	Sixteenth Sitting Col. 469

	27 June 2023 29 June 2023	Seventeenth Sitting Col. 503 Eighteenth Sitting Col. 535
Report	5 September	Vol 737, Col. 246
Third Reading	5 September	Division 320
Ping Pong		
Lord Consideration of Commons Amendments	12 September	Vol. 832, Col 793
Commons Consideration of Lords Amendments	18 October	Vol. 738, Col 352
Lords Consideration of Commons Amendments	24 October	Vol. 833, Col 511

Annex C – Progress of Bill Table

979 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Act as introduced in the Lords	Act as amended in Committee in the Lords	Act as amended in Report in the Lords	Act as Introduced in the Commons	Act as amended in Committee in the Commons
1-60	1-60	1-60	1-60	1-60	1-60
61					61
62					62
63					63
64					64
65	61	61	61	61	65
66	62	62	62	62	66
67	63	63	63	63	67
68	64	64	64	64	68
69	65	65	65	65	69
70	66	66	66	66	70
71			67	67	71
72	67	67	68	68	72
73	68	68	69	69	73
74	69	69	70	70	74
75	70	70	71	71	75
76	71	71	72	72	76
77	72	72	73	73	77
78	73	73	74	74	78
79	74	74	75	75	79
80			76	76	80
81	75	75	77	77	81
82	76	76	78	78	82

Section of the Act	Act as introduced in the Lords	Act as amended in Committee in the Lords	Act as amended in Report in the Lords	Act as Introduced in the Commons	Act as amended in Committee in the Commons
83	77	77	79	79	83
84		78	80	80	84
85	78	79	81	81	85
86	79	80	82	82	86
87	80	81	83	83	87
88	81	82	84	84	88
89		83	85	85	89
90			86	86	90
91		84	87	87	91
92	82	85	88	88	92
93	83	86	89	89	93
94					
95	84	87	90	90	94
96	85	88	91	91	95
97	86	89	92	92	96
98	87	90	93	93	97
99	88	91	94	94	98
100	89	92	95	95	99
101	90	93	96	96	100
102	91	94	97	97	101
103	92	95	98	98	102
104	93	96	99	99	103
105	94	97	100	100	104
106	95	98	101	101	105
107					106

Section of the Act	Act as introduced in the Lords	Act as amended in Committee in the Lords	Act as amended in Report in the Lords	Act as Introduced in the Commons	Act as amended in Committee in the Commons
108					107
109					108
110					109
111					110
112					111
113					112
114					113
115					114
116					115
117					116
118					117
119					118
120					119
121					120
122					121
123					122
124					123
125					124
126					125
127					126
128	96	99	102	102	127
129	97	100	103	103	128
130					129
131					130
132					131

Section of the Act	Act as introduced in the Lords	Act as amended in Committee in the Lords	Act as amended in Report in the Lords	Act as Introduced in the Commons	Act as amended in Committee in the Commons
133					132
134					133
135					134
136					135
137					136
138					137
139					138
140					139
141					140
142					141
143	98	101	104	104	142
144	99	102	105	105	143
145	100	103	106	106	144
146	101	104	107	107	145
147	102	105	108	108	146
148	103	106	109	109	147
149	104	107	110	110	148
150	105	108	111	111	149
151	106	109	112	112	150
152	107	110	113	113	151
153	108	111	114	114	152
154	109	112	115	115	153
155					154
156	110	113	116	116	155
157			117	117	156
158					
159					
160	111	114	118	118	157
161	112	115	119	119	158
162	113	116	120	120	159
163	114	117	121	121	160

Section of the Act	Act as introduced in the Lords	Act as amended in Committee in the Lords	Act as amended in Report in the Lords	Act as Introduced in the Commons	Act as amended in Committee in the Commons
164	115	118	122	122	161
165	116	119	123	123	162
166	117	120	124	124	163
167	118	121	125	125	164
168	119	122	126	126	165
169	120	123	127	127	166
170	121	124	128	128	167
171	122	125	129	129	168
172	123	126	130	130	169
173	124	127	131	131	170
174	125	128	132	132	171
175	126	129	133	133	172
176	127	130	134	134	173
177	128	131	135	135	174
178	129	132	136	136	175
179	130	133	137	137	176
180	131	134	138	138	177
181	132	135	139	139	178
182	133	136	140	140	179
183	134	137	141	141	180
184	135	138	142	142	181
185	136	139	143	143	182
186	137	140	144	144	183
187	138	141	145	145	184
188	139	142	146	146	185
189	140	143	147	147	186
190	141	144	148	148	187
191	142	145	149	149	188
192	143	146	150	150	189
193	144	147	151	151	190
194	145	148	152	152	191
195	146	149	153	153	192
196	147	150	154	154	193

Section of the Act	Act as introduced in the Lords	Act as amended in Committee in the Lords	Act as amended in Report in the Lords	Act as Introduced in the Commons	Act as amended in Committee in the Commons
197	148	151	155	155	194
198	149	152	156	156	195
199	150	153	157	157	196
200	151	154	158	158	197
201	152	155	159	159	198
202					199
203	153	156	160	160	200
204	154	157	161	161	201
205	155	158	162	162	202
206	156	159	163	163	203
207	157	160	164	164	204
208	158	161	165	165	205
209	159	162	166	166	206
210	160	163	167	167	207
	161				
211					208
212					209
213	162	164	168	168	210
214	163	165	169	169	211
215	164	166	170	170	212
216	165	167	171	171	213
217	166	168	172	172	214
218	167	169	173	173	215
219	168	170	174	174	216
220					
221	169	171	175	175	217
222	170	172	176	176	218
223	171	173	177	177	219
224	172	174	178	178	220
225	173	175	179	179	221
226	174	176	180	180	222
227	175	177	181	181	223
228	176	178	182	182	224

Section of the Act	Act as introduced in the Lords	Act as amended in Committee in the Lords	Act as amended in Report in the Lords	Act as Introduced in the Commons	Act as amended in Committee in the Commons
229	177	179	183	183	225
230	178	180	184	184	226
231	179	181	185	185	227
232	180	182	186	186	228
233	181	183	187	187	229
234	182	184	188	188	230
235	183	185	189	189	231
236	184	186	190	190	232
237	185	187	191	191	233
238	186	188	192	192	234
239	187	189	193	193	235
240	188	190	194	194	236
241	189	191	195	195	237
242	190	192	196	196	238
243	191	193	197	197	239
244	192	194	198	198	240
245	193	195	199	199	241
246	194	196	200	200	242
247	195	197	201	201	243
248	196	198	202	202	244
249	197	199	203	203	245
			204	204	
250	198	200	205	205	246
251	199	201	206	206	247
252	200	202	207	207	248
253	201	203	208	208	249

Section of the Act	Act as introduced in the Lords	Act as amended in Committee in the Lords	Act as amended in Report in the Lords	Act as Introduced in the Commons	Act as amended in Committee in the Commons
254		204	209	209	250
255		205	210	210	251
256		206	211	211	252
257		207	212	212	253
258		208	213	213	254
259		209	214	214	255
260		210	215	215	256
261		211	216	216	257
262		212	217	217	258
263		213	218	218	259
264		214	219	219	260
265		215	220	220	261
266		216	221	221	262
267	202	217	222	222	263
268	203	218	223	223	264
269	204	219	224	224	265
270	205	220	225	225	266
271	206	221	226	226	267
272	207	222	227	227	268
273	208	223	228	228	269
274	209	224	229	229	270
275	210	225	230	230	271
276	211	226	231	231	272
277	212	227	232	232	273
278	213	228	233	233	274

Section of the Act	Act as introduced in the Lords	Act as amended in Committee in the Lords	Act as amended in Report in the Lords	Act as Introduced in the Commons	Act as amended in Committee in the Commons
279	214	229	234	234	275
280	215	230	235	235	276
281	216	231	236	236	277
282	217	232	237	237	278
283	218	233	238	238	279
284	219	234	239	239	280
285	220	235	240	240	281
286	221	236	241	241	282
287	222	237	242	242	283
288	223	238	243	243	284
289	224	239	244	244	285
290		240	245	245	286
291		241	246	246	287
292		242	247	247	288
293		243	248	248	289
294		244	249	249	290
295		245	250	250	291
296	225	246	251	251	292
297	226	247	252	252	293
298					
299	227	248	253	253	294
300	228	249	254	254	295
301	229	250	255	255	296
302	230	251	256	256	297
303	231	252	257	257	298

Section of the Act	Act as introduced in the Lords	Act as amended in Committee in the Lords	Act as amended in Report in the Lords	Act as Introduced in the Commons	Act as amended in Committee in the Commons
304	232	253	258	258	299
305	233	254	259	259	300
306					301
307	234	255	260	260	302
308	235	256	261	261	303
309	236	257	262	262	304
310	237	258	263	263	305
311		259	264	264	306
312		260	265	265	307
313		261	266	266	308
314		262	267	267	309
315		263	268	268	310
316		264	269	269	311
317					312
318					313
319					314
320					315
321					316
322					317
323					318
324					319
325					320
326					321
327					322
328					323
329					324
			270	270	
			271	271	
			272	272	
			273	273	
330	238	265	274	274	325
331	239	266	275	275	326

Section of the Act	Act as introduced in the Lords	Act as amended in Committee in the Lords	Act as amended in Report in the Lords	Act as Introduced in the Commons	Act as amended in Committee in the Commons
332	240	267	276	276	327
333	241	268	277	277	328
334	242	269	278	278	329
335	243	270	279	279	330
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 3		Schedule 3	Schedule 3	Schedule 3	Schedule 3
Schedule 4	Schedule 3	Schedule 4	Schedule 4	Schedule 4	Schedule 4
Schedule 5	Schedule 4	Schedule 5	Schedule 5	Schedule 5	Schedule 5
Schedule 6	Schedule 5	Schedule 6	Schedule 6	Schedule 6	Schedule 6
Schedule 7					Schedule 7
Schedule 8 – Part 1					Schedule 8 – Part 1
Schedule 8 – Part 2					Schedule 8 – Part 2
Schedule 9 – Part 1	Schedule 6 – Part 1	Schedule 7 – Part 1	Schedule 7 – Part 1	Schedule 7 – Part 1	Schedule 9 – Part 1
Schedule 9 – Part 2	Schedule 6 – Part 2	Schedule 7 – Part 2	Schedule 7 – Part 2	Schedule 7 – Part 2	Schedule 9 – Part 2
Schedule 10	Schedule 7	Schedule 8	Schedule 8	Schedule 8	Schedule 10
Schedule 11	Schedule 8	Schedule 9	Schedule 9	Schedule 9	Schedule 11
Schedule 12	Schedule 9	Schedule 10	Schedule 10	Schedule 10	Schedule 12
Schedule 13	Schedule 10	Schedule 11	Schedule 11	Schedule 11	Schedule 13
Schedule 14	Schedule 11	Schedule 12	Schedule 12	Schedule 12	Schedule 14
Schedule 15 – Part 1	Schedule 12 – Part 1	Schedule 13 – Part 1	Schedule 13 – Part 1	Schedule 13 – Part 1	Schedule 15 – Part 1
Schedule 15 – Part 2	Schedule 12 – Part 2	Schedule 13 – Part 2	Schedule 13 – Part 2	Schedule 13 – Part 2	Schedule 15 – Part 2
Schedule 16 – Part 1	Schedule 13 – Part 1	Schedule 14 – Part 1	Schedule 14 – Part 1	Schedule 14 – Part 1	Schedule 16 – Part 1
Schedule 16 – Part 2	Schedule 13 – Part 2	Schedule 14 – Part 2	Schedule 14 – Part 2	Schedule 14 – Part 2	Schedule 16 – Part 2
Schedule 16 – Part 3	Schedule 13 – Part 3	Schedule 14 – Part 3	Schedule 14 – Part 3	Schedule 14 – Part 3	Schedule 16 – Part 3
Schedule 17	Schedule 14	Schedule 15	Schedule 15	Schedule 15	Schedule 17
Schedule 18 – Part 1	Schedule 15 – Part 1	Schedule 16 – Part 1	Schedule 16 – Part 1	Schedule 16 – Part 1	Schedule 18 – Part 1
Schedule 18 – Part 2	Schedule 15 – Part 2	Schedule 16 – Part 2	Schedule 16 – Part 2	Schedule 16 – Part 2	Schedule 18 – Part 2
Schedule 18 – Part 3	Schedule 15 – Part 3	Schedule 16 – Part 3	Schedule 16 – Part 3	Schedule 16 – Part 3	Schedule 18 – Part 3
Schedule 18 –	Schedule 15 –	Schedule 16 –	Schedule 16 –	Schedule 16 –	Schedule 18 –

Section of the Act	Act as introduced in the Lords	Act as amended in Committee in the Lords	Act as amended in Report in the Lords	Act as Introduced in the Commons	Act as amended in Committee in the Commons
Part 4	Part 4	Part 4	Part 4	Part 4	Part 4
Schedule 18 – Part 5	Schedule 15 – Part 5	Schedule 16 – Part 5	Schedule 16 – Part 5	Schedule 16 – Part 5	Schedule 18 – Part 5
Schedule 18 – Part 6	Schedule 15 – Part 6	Schedule 16 – Part 6	Schedule 16 – Part 6	Schedule 16 – Part 6	Schedule 18 – Part 6
Schedule 18 – Part 7	Schedule 15 – Part 7	Schedule 16 – Part 7	Schedule 16 – Part 7	Schedule 16 – Part 7	Schedule 18 – Part 7
Schedule 18 – Part 8	Schedule 15 – Part 8	Schedule 16 – Part 8	Schedule 16 – Part 8	Schedule 16 – Part 8	Schedule 18 – Part 8
Schedule 18 – Part 9	Schedule 15 – Part 9	Schedule 16 – Part 9	Schedule 16 – Part 9	Schedule 16 – Part 9	Schedule 18 – Part 9
Schedule 18 – Part 10	Schedule 15 – Part 10	Schedule 16 – Part 10	Schedule 16 – Part 10	Schedule 16 – Part 10	Schedule 18 – Part 10
Schedule 18 – Part 11	Schedule 15 – Part 11	Schedule 16 – Part 11	Schedule 16 – Part 11	Schedule 16 – Part 11	Schedule 18 – Part 11
Schedule 18 – Part 12	Schedule 15 – Part 12	Schedule 16 – Part 12	Schedule 16 – Part 12	Schedule 16 – Part 12	Schedule 18 – Part 12
Schedule 18 – Part 13	Schedule 15 – Part 13	Schedule 16 – Part 13	Schedule 16 – Part 13	Schedule 16 – Part 13	Schedule 18 – Part 13
Schedule 19	Schedule 16	Schedule 17	Schedule 17	Schedule 17	Schedule 19
Schedule 20	Schedule 17	Schedule 18	Schedule 18	Schedule 18	Schedule 20
Schedule 21 – Part 1	Schedule 18 – Part 1	Schedule 19 – Part 1	Schedule 19 – Part 1	Schedule 19 – Part 1	Schedule 21 – Part 1
Schedule 21 – Part 2	Schedule 18 – Part 2	Schedule 19 – Part 2	Schedule 19 – Part 2	Schedule 19 – Part 2	Schedule 21 – Part 2
Schedule 22	Schedule 19	Schedule 20	Schedule 20	Schedule 20	Schedule 22

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