These notes refer to the Energy Act 2013 (c.32)
which received Royal Assent on 18 December 2013

ENERGY ACT 2013

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Energy Act 2013 which received Royal Assent on 18 December 2013. They have been prepared by the Department of Energy and Climate Change 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.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. This Act establishes a legislative framework for delivering secure, affordable and low carbon energy.

4. At its core is the need to ensure that, as older power plants are taken offline, the United Kingdom remains able to generate enough energy to meet its needs even if demand increases. Doing this while also decarbonising requires significant investment in new infrastructure to be brought forward – over £100 billion – and new schemes to be integrated to ensure this investment comes forward.

Part 1: Decarbonisation

5. Part 1 of this Act gives the Secretary of State a power, by order, to set or amend a decarbonisation target range – being a target range for the level of carbon intensity of the electricity generation sector in the United Kingdom. Carbon intensity is a measure of the amount of carbon dioxide (or other greenhouse gases) produced per unit of electricity generated. The earliest year that a decarbonisation target range could be set for is 2030, and the power to set this target range cannot be exercised until the United Kingdom's fifth carbon budget is set (expected to be in 2016, based on the timescales for carbon budgets as set out in the Climate Change Act 2008). Prior to setting a decarbonisation target range, the Secretary of State is required to consider a number of factors set out in the Act, and to consult the devolved administrations in Northern Ireland, Scotland and Wales. Once a decarbonisation target range has been set, the Secretary of State has a duty to ensure that the upper end of the target range is not exceeded, to report to Parliament on the policies and proposals to meet a target range, and to publish an annual statement on the carbon intensity of electricity generation in the United Kingdom.

Part 2: Electricity Market Reform

6. Electricity Market Reform, the cornerstone of this Act, was first set out in a White Paper in July 2011. Its provisions have now expanded to cover everything in Part 2 of the Act. References to 'the Authority' refer to the Gas and Electricity Markets Authority.

Chapter 1: General considerations

7. This Chapter sets out the objectives of Electricity Market Reform ("EMR") that the Secretary of State will have regard to when carrying out the key EMR functions (contracts for difference, the capacity market and related functions within Part 2 of the Act).

8. The EMR objectives to which the Secretary of State will have regard are: the carbon reduction targets as set out in the Climate Change Act 2008, which include a 34% reduction by 2020 and 80% reduction by 2050; the decarbonisation target range duty in Part 1 of the Act (which applies when a target range has been set); the need to ensure a security of electricity supply (including through diversification of our energy mix); the cost to consumers; and the legally binding EU targets for 15% of United Kingdom energy to be supplied from renewable sources by 2020.

9. This Chapter also imposes a duty on the Secretary of State to lay before Parliament each year a report setting out how the Secretary of State has carried out his or her functions under Part 2.

Chapter 2: Contracts for difference

10. The contract for difference (CFD) aims to tackle the lack of investment in low carbon electricity generation allowing the Government to achieve its objectives under the Electricity Market Reform to:

    - ensure the future security of electricity supplies,
    - drive the decarbonisation of our electricity generation, and
    - minimise costs to the consumer.

11. The CFD provides developers of eligible low carbon electricity generation with a long term contract that provides for a stable revenue stream which facilitates investment in low carbon. Most CFDs will be allocated by the operator of the national electricity transmission system (currently National Grid Electricity Transmission PLC) who will determine the eligibility of the applicant and issue a notification, in line with the regulations to be made by the Secretary of State, to the CFD counterparty to offer a contract to the eligible generator. In the longer term allocation of CFDs and strike prices, see paragraph 12, will be determined by a competitive process. In exceptional cases the Secretary of State will allocate CFDs to individual projects which have been individually negotiated. Such individual negotiations are likely to take place where the standard terms of a CFD might not be suited and will need to be tailored to the circumstances of the project. Where the Secretary of State has individually negotiated a CFD he or she will then direct the CFD counterparty to offer such contracts. Thereafter the CFD counterparty will be in a commercial relationship with the generators, governed by the terms of the CFD.

12. In most cases the mechanism will work by setting a "strike price" (a price per unit of electricity generated) which will be at the level determined to be necessary to support the particular technologies supported by the scheme. The contracts will also refer to a "reference price" which is a price which attempts to reflect the wholesale electricity price at a particular time. Generators will sell their generation into the market (as normal) and, where the strike price exceeds the reference price, the counterparty will pay the generators the difference between the strike price and the reference price. The combination of the payment from the CFD counterparty, and the revenue from the sale of electricity, should ensure that a generator broadly receives the strike price.

13. When the reference price is above an agreed strike price, payments will be made by the generator to the CFD counterparty. This clawback is aimed at ensuring that generators only receive the revenue necessary to support them. When the reference price is above an agreed strike price, payments will be made by the generator to the CFD counterparty.

There may be variations on this "two-way" CFD model in order to support different types of generation whilst still retaining sensible incentives to generate.

14. The cost of the contracts to the CFD counterparty will be met by licensed electricity suppliers (both those licensed in Great Britain and those licensed in Northern Ireland) and it is anticipated that the costs of the CFD counterparty itself will be met from the same source. Suppliers in turn are likely to pass such costs onto consumers. Where the CFD counterparty receives payments back from generators under the contracts these will be passed on to suppliers.

15. Aspects of the operation of the CFD counterparty will be regulated by the Secretary of State. This is designed to ensure the protection of suppliers and ultimately consumers.

Chapter 3: Capacity Market

16. The Capacity Market is being introduced to mitigate future risks to the security of electricity supplies.

17. Since 2011, 8% of generating capacity has closed under the Large Combustion Plant Directive. A further 10-12% of current power generating capacity is due to close over the coming decade, and more intermittent (wind) and inflexible (nuclear) generation is being built to replace it. These changes to our market create an investment challenge, in particular for plant which will be needed during periods of peak demand or still days, but which would operate less often than now and therefore have less certain revenues. This uncertainty could lead to underinvestment and, as a consequence, uncomfortably low levels of reliable capacity.

18. This legislation therefore provides for the introduction of the Capacity Market to provide an insurance policy against the possibility of future blackouts – for example during cold, windless periods – with the aim of helping to ensure that consumers continue to receive reliable electricity supplies at an affordable cost.

19. Under the Capacity Market, a forecast will be made of future peak electricity demand. This will then be used to determine the level of reliable capacity that is needed to ensure security of supply in a future period. Providers of capacity (either electricity generation or other non-generation technologies such as demand side response) will compete against each other in capacity auctions held four years and one year ahead of the year capacity is expected to be in place, should it be needed. Those who are successful in the auction will receive a guaranteed revenue stream for providing capacity. This is separate to any revenues that they receive through the electricity market. If the capacity providers are unable to provide the capacity when it is needed they will face penalties (referred to as capacity incentives). The Capacity Market will therefore ensure sufficient reliable capacity is available by providing revenue to incentivise investment in new capacity or existing capacity to remain open.

Chapter 4: Investment contracts

20. The provisions in this Chapter are aimed at addressing the risk of hiatus in investment in low carbon electricity generation before the CFD regime ("the enduring regime") is fully established under the regulation-making powers provided for in Chapter 2 of Part 2 of the Act. Therefore, the provisions here are transitional in the sense in that they are intended to relate to arrangements entered into during a relatively short period. Investment contracts must have been entered into by the Secretary of State by 31st December 2015, or if earlier the date on which regulations made under section*10(3)* first define "eligible generator" (i.e. the type of electricity generator who may benefit from a CFD under the enduring regime) – see *paragraph 1(1)*(*a*) of Schedule 2.

21. "Investment contracts" are contracts with an electricity generator entered into by the Secretary of State (see *paragraph 1(1)* of Schedule 2). Key characteristics include that a contract must contain an obligation for the parties to make payments to each

other based on the difference between a strike price and a reference price in relation to electricity generated (see *paragraph 1(1)(c)*), that this obligation must be conditional upon Schedule 2 coming into force (where the contract is entered into before then) – see *paragraph 1(2)* and that the contract has been laid before Parliament together with a statement about certain matters (see *paragraph 1(1)(d)*, *(5)* and *(6)* and section*5(2)*). For example, the statement must set out that the Secretary of State is of the opinion that payments which would be made under the contract would encourage low carbon electricity generation (see *paragraph 1(6)(a)*).

22. The Act (see Part 4 of Schedule 2) makes provision for investment contracts to be transferred to a CFD counterparty when one has been designated under section 7(1), or alternatively to a person designated by the Secretary of State as an investment contract counterparty. Once the CFD counterparty has been designated, and certain other conditions have been satisfied, the Secretary of State will be under a duty to transfer investment contracts to the CFD counterparty.

23. The provisions in Chapter 4 will provide a tool that may be used to avert any investment hiatus because they will enable the Secretary of State to give effect to investment contracts entered into before the establishment of the enduring regime (including contracts entered into before enactment of the Act). They do this by providing various powers and authorisations, particularly relating to the financing of obligations under investment contracts (see *paragraphs 7* and *20* of Schedule 2). In containing these particular provisions relating to investment contracts, the Act can provide a timely and significant measure of confidence regarding the revenue stream that a project is to receive, to enable investors/developers to make positive final investment decisions in relation to low carbon electricity generation projects in advance of the enduring regime.

Chapter 5: Conflict of interest and contingency arrangements

24. This Chapter gives the Secretary of State power to amend the national system operator's transmission licence to introduce business separation or ring-fencing measures. There are valuable synergies from the national system operator taking on the electricity market reform delivery role. However, it could also give rise to conflicts of interest with the system operator's existing roles in the electricity market, for example as owner of the transmission network, and its other commercial interests such as businesses in carbon capture and storage, interconnection and offshore wind transmission. DECC has been working with the Authority to assess potential conflicts of interest and published a report on proposed mitigation measures in April 2013.

25. This Chapter also provides the Secretary of State with a power to transfer the electricity market reform delivery functions from the national system operator to a new delivery body. Finally, it amends the duties of energy administrators under the special administration regime in the Energy Act 2004 to ensure the continued delivery of electricity market reform functions.

Chapter 6: Access to markets etc.

26. Wholesale market liquidity is an important feature of a competitive market. It provides market participants with a route to market, risk management opportunities and investment and operational signals. Liquidity is important to the success of the electricity market reform programme and in attracting the investment required in the Great Britain generation market over the next ten years. A more liquid market would facilitate market entry, improve competition and increase the robustness of the contracts for difference (CFD) reference price.

27. The electricity market in Great Britain is characterised by low levels of liquidity with especially poor liquidity in the forward markets. The Authority first identified liquidity as a significant barrier to entry in its 2008 Energy Supply Probe and has undertaken a number of market assessments and consulted on a range of proposals since then. In April 2013 the Authority took a "minded to" decision to intervene in the wholesale

electricity market to improve liquidity. The Authority consulted on the detailed design of the 'Secure & Promote' package in June 2013. The Authority has now taken an "in principle" decision to proceed with the package with a view to a final decision in January 2014 and implementation in early 2014.

28. Independent developers have played an important role in delivering new capacity in the renewable and gas generation sectors and could play a key role in meeting the Government's goals and deliver essential investment and competition in the future, provided market conditions are right. Independent developers usually require a long-term contract for the sale of their power (a Power Purchase Agreement (PPA)) with a credit-worthy counterparty before lenders will provide finance for a project, as it provides comfort that revenues are reasonably secure and risks will be appropriately managed.

29. Responses to a DECC call for evidence in May 2012 showed that the market for PPAs has shifted and generators are finding it difficult to secure PPAs on terms that will meet the requirements of their financiers. The measures set out in the Act, particularly the Contracts for Difference, will reduce the risks that independent generators face and should improve the situation. However, there is a risk that the PPA market may not respond in the way the Government expects and that a more targeted intervention is necessary.

30. The powers in this Chapter enable the Government to intervene in the market to address the problem of low levels of liquidity in the wholesale power market and the difficulties faced by independent generators in securing long-term contracts for the sale of their electricity. They allow the Secretary of State to modify the conditions of electricity generation and electricity supply licences and their related codes to address low liquidity and facilitate participation in the GB market. They also allow the Secretary of State to modify the conditions of electricity supply licences and their related codes to facilitate investment in electricity generation by means of a power purchase agreement scheme, which is a scheme to promote the availability to electricity generators of PPAs.

Chapter 7: The renewables obligation: transitional arrangements

31. The Renewables Obligation (RO) is the main financial mechanism by which Government incentivises deployment of large scale renewable electricity projects in the United Kingdom. It came into effect in 2002 in England and Wales and in Scotland and in 2005 in Northern Ireland. Banding – whereby different technologies receive different levels of support – was introduced in April 2009. In April 2010, the end date of the RO in Great Britain was extended from 2027 to 2037.

32. Chapter 2 of Part 2 contains powers for a contract for difference scheme (CFD) which would be made available to new renewable generation. Once the CFD becomes available, the EMR White Paper proposed a transition phase where new renewable generating stations would be able to choose between the RO or a CFD.

33. The EMR White Paper proposed that the transition phase would end on 31st March 2017, after which the RO would be closed to new generating capacity. The RO would continue to operate for the generating capacity which accredited under it before it closed to new generating capacity.

34. In order to reduce the risk of volatility in the value of a renewables obligation certificate in the final years of the RO, the EMR White Paper proposed that from 2027 the obligation on electricity suppliers to submit renewables obligation certificates should be replaced by an obligation on a body, such as the Authority, to purchase the certificates at a fixed price. The EMR Technical Update proposed that the cost of purchasing the certificates should be funded by a levy on electricity suppliers. This Chapter provides powers for the Secretary of State to implement these proposals.

Chapter 8: Emissions performance standard

35. The Emissions Performance Standard (EPS) imposes an "emissions limit duty" on operators of new fossil-fuel plant. The duty requires operators of a fossil-fuel plant to ensure that the plant does not emit more than a specified amount of carbon dioxide (CO_2) in each year of their operation, thereby reinforcing the existing policy (set out in national policy statements designated under the Planning Act 2008: National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2)) that no new coal-fired power plant should be consented unless equipped with carbon capture and storage (CCS) technology.

36. The Chapter establishes the EPS as an annual limit, equivalent to 450g of CO_2 per kilowatt hour of electricity for a plant operating at baseload. For the purpose of the EPS, "baseload" is assumed as a plant operating at full output for 85% of the operating hours available in a year. The annual limit is in the form of an annual mass of emissions, i.e. tonnes of CO_2 per annum. The limit is around half the level expected of new coal plant when operating unabated, which is nearly 800g/kWh. It is, however, above the level of modern combined cycle gas-fired power plant, which operate at below 400g/kWh.

37. The provisions in this Chapter, in addition to setting out the emissions limit duty, also provide for the circumstances in which it may be suspended or modified and provides powers for an appropriate national authority to make arrangements for establishing a monitoring and enforcement regime. They also provide that carbon capture and storage projects will be exempted from the emissions limit duty for a period of 3 years commencing from the start of operation of the CCS system. The exemption is available until end 2027.

38. The EPS is also included under section 66, which requires the Secretary of State to carry out a review of much of Part 2, as soon as is reasonably practicable, five years after Royal Assent, and report his or her conclusions to Parliament.

Part 3: Nuclear Regulation

Chapter 1: The ONR's purposes

39. Chapter 1 of Part 3 sets out the purposes of the Office for Nuclear Regulation ("ONR"). These five purposes define the areas of responsibility of the ONR and where it will be able to exercise functions. The ONR's purposes also serve to shape the purposes for which the Secretary of State can make regulations under Chapter 2.

Chapter 2: Nuclear regulations

40. Chapter 2 provides powers to the Secretary of State to make nuclear regulations so the legislative framework can allow for flexibility in the regulation of the nuclear industry and for the regime to react effectively in this evolving area.

Chapter 3: Office for Nuclear Regulation

41. Chapter 3 establishes the ONR as a body corporate. The Chapter sets out how the ONR will be structured and explains how it will operate, including: the constitution of the ONR Board; how the organisation will report and be accountable for its activities and delivery of its objectives; and its financial arrangements.

Chapter 4: Functions of the ONR

42. The provisions in this Chapter confer on the ONR a variety of powers and duties. These functions reflect a number of the roles which the ONR is to perform. Its primary role is to regulate the nuclear industry in the areas set out in its five purposes.

Chapter 5: Supplementary

43. This Chapter covers a range of supplementary matters. These include staff and property transfers, supplementary provision relating to criminal offences under Part 3 of the Act and minor and consequential amendments to existing legislation.

Part 4: Government Pipe-Line and Storage System

44. The government pipe-line and storage system consists of around 2,500 kilometres of cross-country pipelines of differing diameters, together with storage depots, associated pumping stations, receipt and delivery facilities and other ancillary equipment. The system receives, stores, transports and delivers light oil petroleum products for military and civil users. In peacetime the military use amounts to only around 10% of the current throughput and 30% of the storage capacity of the system. It distributes 40% of aviation fuel within the United Kingdom.

45. The powers under which the system was constructed and under which rights were acquired in relation to it were many and various. Elements of the system were constructed on, or under, what was, or remains, publicly owned or acquired land. Much of the system, however, was constructed on or under private land. Some elements of the system were constructed on or under private land under statutory powers. Other elements were built by agreement with the landowner at the time.

46. Part 4 makes provision relating to the government pipe-line and storage system, in particular: the rights of the Secretary of State in relation to that system; registration of those rights; compensation in respect of the creation of new rights or the exercise of rights; that the rights may be transferred; and, the application of the Pipe-lines Act 1962 to the system.

Part 5: Strategy and Policy Statement

47. Part 5 of the Act introduces a new document, a strategy and policy statement, which will set out the Government's strategic priorities for the energy sector in Great Britain, describe the roles and responsibilities of various players who implement, or are affected by, GB energy policy and describe policy outcomes which are to be achieved by the Authority and the Secretary of State when regulating the sector. The strategy and policy statement will replace existing guidance for the Authority on social and environmental matters. These provisions implement the recommendations of the Government's review of the Authority published in July 2011.

Part 6: Consumer Protection and Miscellaneous

Consumer Protection

48. The provisions in this Chapter are aimed at directly supporting consumers' interests by reforming the tariffs available to them and providing a means of direct redress from energy companies. The provisions establish powers for the Secretary of State to establish a tariff regime for gas and electricity suppliers that will ensure consumers are on the cheapest deal from their supplier that meets their preferences. They allow the Secretary of State to extend the licence regime governed by the Authority to third-party intermediaries, such as switching websites. They also introduce a new enforcement power to require energy companies which breach licence conditions to provide redress to consumers.

Fuel Poverty

49. The sections amending the Warm Homes and Energy Conservation Act 2000 require a new objective for addressing fuel poverty in England to be set through secondary legislation, together with a target date for achieving the new objective. The Secretary of State is separately required to prepare and publish a strategy for achieving the new

objective. The sections replace the existing provisions of section 2 of that Act insofar as they apply to England.

Feed-in Tariffs

50. The Feed-in tariff scheme established under sections 41 to 43 of the Energy Act 2008 currently applies to installations with a capacity of 5 megawatts or less. Section 146 confers a power on the Secretary of State to increase the specified maximum capacity of installations eligible for the scheme to 10 megawatts.

Offshore Transmission

51. Developers constructing an offshore generating station have the choice of also constructing the offshore transmission assets for the purposes of connecting the electricity generated to the National Electricity Transmission System (NETS), before transferring the assets to an Offshore Transmission Owner (OFTO) appointed through a competitive tender process (the generator build model). Section 4(1)(b) of the Electricity Act 1989 prohibits the transmission of electricity to any premises without a licence. Section 147 amends section 4 in respect of specific transmission activities to exclude offshore transmission during a commissioning period in certain circumstances.

Fees for services provided for energy resilience purposes

52. Section 148 introduces a power for the Secretary of State to charge fees for services or facilities provided in the exercise of energy resilience powers.

Nuclear decommissioning costs

53. Under Chapter 1 of Part 3 of the Energy Act 2008 the Secretary of State can recover from prospective nuclear operators the costs incurred in obtaining advice in considering a funded decommissioning programme ("FDP") once submitted to him or her for approval. The new provisions will extend the circumstances under which the Secretary of State can recover these costs when considering FDP proposals, related agreements and agreements for the disposal of hazardous nuclear waste.

Smoke and carbon monoxide alarms

54. Section 149 introduces a power for the Secretary of State to make regulations imposing duties on landlords of residential properties in England to install smoke and carbon monoxide alarms in their properties. The section also makes provision about the enforcement of such duties.

OVERVIEW AND STRUCTURE OF THE ACT

55. The Act is in seven parts:

- **Part 1: Decarbonisation.** Establishes a framework for a decarbonisation target range for the electricity generation sector in the United Kingdom. This Part gives the Secretary of State a power to set a decarbonisation target range, imposes a duty on the Secretary of State in respect of any decarbonisation target range which is set and includes certain reporting requirements.

- **Part 2: Electricity Market Reform**. Reforms the electricity market with the aim of ensuring that electricity demands continue to be met over the coming decades. This Part includes provisions on contracts for difference and investment contracts, the capacity market, liquidity and market access, institutional arrangements in relation to the delivery of these schemes, a transition to a certificate purchase scheme for generation supported by the renewables obligation, and an emissions performance standard for new fossil-fuel plants.

- **Part 3: Nuclear Regulation**. Establishes the Office for Nuclear Regulation with powers and responsibilities to regulate the safety and security of nuclear installations (including nuclear power plants), as well as to deal with the transport of radioactive materials, nuclear security and safeguards more generally.
- **Part 4: Government Pipe-line and Storage System (GPSS)**. Measures to enable the sale of the GPSS including providing for the rights of the Secretary of State in relation to the GPSS, registration of those rights, compensation in respect of the creation of new rights or their exercise, and for transferral of ownership, as well as powers to dissolve the Oil and Pipelines Agency by order.
- **Part 5: Strategy and Policy Statement.** Measures applicable to the Authority and the Secretary of State to create regulatory certainty by seeking to ensure that Government and the regulator are aligned at a strategic level.
- **Part 6: Consumer Protection and Miscellaneous**:
  - **Domestic tariffs**: Measures to provide the Secretary of State with powers to amend licence conditions of gas and electricity suppliers to ensure domestic consumers are on the cheapest tariff with their supplier that meets their preferences.
  - **Third-party intermediaries**: Extending the scope of activities which can be made subject to a licensing regime governed by the Authority to cover third-party intermediaries in the energy sector such as switching sites.
  - **Consumer redress**: A measure introducing a new enforcement power for the Authority to require energy companies which breach licence conditions or other relevant regulatory requirements to provide redress to consumers who suffer loss, damage or inconvenience as a result of the breach.
  - **Fuel Poverty**: A measure to replace the current provisions of section 2 of the Warm Homes and Energy Conservation Act 2000, insofar as they apply to England, with the requirement to set a new objective for addressing fuel poverty.
  - **Feed-in tariffs:** A measure to allow the Secretary of State to increase the maximum capacity of installations eligible for the Feed-in Tariff scheme.
  - **Offshore transmission**: A measure to provide an exception to the prohibition of participating in the transmission of electricity without a licence for a person who participates in offshore transmission during a commissioning period in certain circumstances.
  - **Fees for energy resilience services:** A measure to enable the Secretary of State to charge fees for providing energy resilience services for the purposes of, or in connection with, preventing or minimising disruption to the energy sector.
  - **Nuclear decommissioning**: A measure to enable the Secretary of State to recover the costs incurred in considering various agreements and programmes relating to the decommissioning of nuclear installations and the disposal of hazardous waste.
  - **Smoke and carbon monoxide alarms:** A measure that enables the Secretary of State to make regulations which require landlords of residential buildings to install smoke and carbon monoxide alarms in their properties and which make provision about the enforcement of any such duty.
- **Part 7: Final**. This Part includes provision authorising spending in relation to electricity market reform.

TERRITORIAL EXTENT AND APPLICATION

56. This Act extends to England and Wales, Scotland and Northern Ireland, as described below.

- all provisions in this Act extend to England and Wales, other than section 55(4) (closure of support under the renewables obligation in Northern Ireland).
- in the application of this Act to Wales, it is to be noted that there are no government pipeline and storage system assets in Wales, and section 150 (smoke and carbon monoxide alarms) is only exercisable in relation to a relevant landlord of residential premises in England.
- the new provisions in the Warm Homes and Energy Conservation Act will apply only to England.
- all provisions in this Act extend to Scotland, other than section 55(4), section 149 (fees in respect of decommissioning and clean-up of nuclear installations) and section 150 (smoke and carbon monoxide alarms).
- only the following provisions extend to Northern Ireland:
  - decarbonisation (Part 1),
  - general considerations (Part 2, Chapter 1),
  - contracts for difference (Part 2, Chapter 2),
  - investment contracts (Part 2, Chapter 4),
  - power to apply to Northern Ireland provisions in relation to closure of support under the renewables obligation (section 55(4), in Part 2),
  - transition to certificate purchase scheme (section 56, in Part 2),
  - emissions performance standard (Part 2, Chapter 8),
  - exemption from liability in damages (section 63, in Part 2),
  - most aspects of nuclear regulation (Part 3),
  - fees in respect of decommissioning and clean-up of nuclear sites (section 149, in Part 6), and
  - final provisions (Part 7).

COMMENTARY ON SECTIONS

Part 1: Decarbonisation

Section 1: Decarbonisation target range

57. *Subsection (1)* places a duty on the Secretary of State to ensure, once a decarbonisation target range has been set, that the carbon intensity of the electricity generation sector in the United Kingdom does not exceed the maximum level permitted by that decarbonisation target range.

58. *Subsection (2)* gives the Secretary of State a power, by order, to set a decarbonisation target range or to amend a decarbonisation target range that has already been set. An order setting or amending a decarbonisation target range is defined as a "decarbonisation order".

59. *Subsection (3)* defines "decarbonisation target range" as a range for the carbon intensity of electricity generation in the United Kingdom. Subsection (4) refers to section 4,

which defines "carbon intensity of electricity generation in the United Kingdom" and contains further provisions about how carbon intensity is to be calculated – see the commentary on that section for more detail.

60. *Subsection (5)* provides that a decarbonisation target range cannot be set in relation to any year before 2030, and that the power in subsection (2) to set a decarbonisation target range cannot be exercised before the carbon budget for the corresponding period has been set by the Secretary of State under section 4(2) of the Climate Change Act 2008. In effect, this means that a decarbonisation target range for the year 2030 cannot be set before 2016, when the level of the fifth carbon budget, which covers the period 2028-2032, is expected to be set in law.

61. *Subsection (6)* limits the circumstances in which the Secretary of State may amend a decarbonisation target range which has already been set, and provides that a decarbonisation target range may be amended only if it is appropriate to do so as a result of significant changes in the factors on which the decision to set, or previously amend, the decarbonisation target range was based.

62. *Subsection (7)* prevents a decarbonisation target range being revoked unless a decarbonisation target range remains in effect.

63. *Subsection (8)* allows the Secretary of State to amend and repeal certain other statutory provisions when the power in *subsection (2)* is exercised:

- *subsection (8)(a)* allows a decarbonisation order to amend section 23(4) of the Climate Change Act 2008. This is to enable the Secretary of State to make consequential amendments to this Act if the power in section 23 of the 2008 Act is exercised to make amendments to the budgetary periods established by that Act. This is intended to provide coherence between this Act and the 2008 Act in terms of the start and end dates of carbon budgetary periods;

- *subsection (8)(b)* enables the repeal of the three yearly progress reporting requirement on decarbonisation and Carbon Capture and Storage contained in section 5 of the Energy Act 2010. This is to remove duplication, since the scope of these reporting requirements is covered by section 3 of this Act.

64. When a decarbonisation order is made which includes the provisions permitted by *subsection (8)*, *subsection (9)(a)* allows that order to include supplementary, incidental and consequential provision and *subsection (9)(b)* allows transitional provision and savings to be made. For example, it may be appropriate to retain the reporting requirement in section 5 of the Energy Act 2010 insofar as it relates to Carbon Capture and Storage.

65. *Subsection (10)* requires that an order setting or amending a decarbonisation target range is to be made by statutory instrument subject to the affirmative resolution procedure (that is, a draft of the order must be approved by both Houses of Parliament).

66. *Subsection (11)* requires the Secretary of State to consult the Department of Enterprise, Trade and Investment in Northern Ireland, and Scottish and Welsh Ministers before setting or amending a decarbonisation target range.

Section 2: Matters to be taken into account

67. *Subsection (1)* provides that the Secretary of State must take into account the matters specified in *subsection (2)* when setting or amending a decarbonisation target range.

68. *Subsection (2)* sets out a list of matters to be taken into account. This is intended to give examples of the broad range of relevant factors that will inform any decision relating to a decarbonisation target range. The matters are not listed in any particular order; the order has no legal significance. Some of these matters reflect those contained in section 10 of the Climate Change Act 2008, which sets out the matters to be taken into

account in connection with carbon budgets, and others are specific to the electricity sector (such as the matters referred to in *paragraphs (b)* and *(f)*). *Paragraph (i)* links the setting or amending of a decarbonisation target range to the 2050 carbon target and the carbon budgets in the Climate Change Act 2008.

Section 3: Further duties of the Secretary of State

69. *Subsection (1)* places a duty on the Secretary of State to lay a report before Parliament, as soon as reasonably practicable after making a decarbonisation order, setting out proposals and policies for meeting a decarbonisation target range that has been set.

70. *Subsection (2)* requires the Secretary of State to consult the Department of Enterprise, Trade and Investment in Northern Ireland, and Scottish and Welsh Minsters before laying a report under *subsection (1)* and to send a copy of the report to them.

71. *Subsection (3)* places a duty on the Secretary of State to lay an annual statement before Parliament on the carbon intensity of electricity generation in the United Kingdom. This duty applies in respect of each year beginning with the year after the setting of a decarbonisation target range and ending with the final year in relation to which a decarbonisation target range has been set.

72. *Subsection (4)* refers to section 4, which defines "carbon intensity of electricity generation in the United Kingdom" and contains further provisions about how carbon intensity is to be calculated – see the commentary on that section for more detail.

73. *Subsection (5)* specifies that the statement must include a summary of the means by which carbon intensity was calculated and, for all statements apart from the first, state whether the carbon intensity has increased or decreased from the previous year.

74. *Subsection (6)* provides that the statement relating to the final target year must also include a statement verifying that the carbon intensity of electricity generation in that year was no greater than the maximum permitted level of the decarbonisation target range. If this is not the case, then this statement must include the reasons why the decarbonisation target range was not met.

75. *Subsection (7)* gives the date by which the statement must be laid before Parliament (no later than 31 March in the second year following the year in respect of which carbon intensity is being reported) and *subsection (8)* requires the Secretary of State to send a copy of the statement to the Department of Enterprise, Trade and Investment in Northern Ireland, and Scottish and Welsh Ministers.

Section 4: Meaning and calculation of "carbon intensity of electricity generation in the United Kingdom"

76. *Subsection (1)* defines the term "carbon intensity of electricity generation in the United Kingdom" as grams of "carbon dioxide equivalent" emissions, measured per kilowatt hour of electricity generated in the United Kingdom. It is a measure of the amount of carbon dioxide (or other greenhouse gases) produced per unit of electricity generated and is to be calculated consistently with "international carbon reporting practice".

77. *Subsection (2)* provides definitions of the terms "carbon dioxide equivalent" and "the United Kingdom" referred to in *subsection (1)*:

- *Paragraph (a)* of this subsection sets out what is meant by "carbon dioxide equivalent" (it includes both carbon dioxide and other greenhouse gases) and requires consideration of the global warming potential of each greenhouse gas. The different gases have different properties relevant to climate change - for example, each gas has a different ability to trap heat in the atmosphere and each gas remains in the atmosphere for a different length of time before being broken down – and these properties can be expressed as a comparable "global warming potential". Global warming potentials of gases are redefined from time to time as scientific analysis

of each gas improves and this is catered for as global warming potential is to be calculated "consistently with international carbon reporting practice";

- *Paragraph (b)* of this subsection also makes it clear that electricity which is generated offshore in the territorial sea adjacent to the United Kingdom (which extends to 12 nautical miles) and in the Renewable Energy Zone will be captured when calculating the carbon intensity of the electricity generation sector in the United Kingdom.

78. *Subsection (3)* incorporates the definitions of "greenhouse gas" and "international reporting practice" contained in the Climate Change Act 2008 into this Act. This is intended to ensure consistency and coherence between the regimes established by the 2008 Act and this Act.

79. *Subsection (4)* allows the Secretary of State, by order, to make further provision about the definition of "carbon intensity of electricity generation in the United Kingdom", the means by which carbon intensity is to be calculated and the meaning of "in relation to any year".

80. *Subsection (5)* requires that any order made under this section must be made by statutory instrument and is subject to the affirmative resolution procedure.

81. *Subsection (6)* provides that an order made under this section can make incidental, supplementary and consequential provisions, any transitory, transitional and saving provisions, different provisions for different cases or circumstances or for different purposes, and provision subject to exceptions.

82. *Subsection (7)* requires the Secretary of State to consult the Department of Enterprise, Trade and Investment in Northern Ireland, and Scottish and Welsh Ministers on any such order before it is laid before Parliament.

Part 2: Electricity Market Reform

Chapter 1: General considerations

Section 5: General considerations relating to this Part

83. This Chapter places a duty on the Secretary of State to have regard to certain matters when setting up the CFD scheme and the capacity market or making changes to them. The section requires the Secretary of State to take account of the government's obligations under the Climate Change Act 2008 to meet the 2050 target and to stay within carbon budgets, the duty to meet any decarbonisation target range once this has been set, the need to ensure security of electricity supplies (which might include, for example, having a diverse mix of generation technologies), the likely cost to consumers in the parts of the United Kingdom affected by the decision he or she is taking and the United Kingdom's obligation to meet European Union targets on the use of energy from renewable sources.

84. This Chapter also sets a duty for the Secretary of State to lay an annual report to Parliament on how the EMR functions under Part 2 have been carried out.

Chapter 2: Contracts for difference

Section 6: Regulations to encourage low carbon electricity generation

85. This sets out the Secretary of State's power to make regulations about contracts for difference.

86. A CFD is a contract between a CFD counterparty and an eligible generator which was offered by the CFD counterparty because the legislation has required the CFD counterparty to offer it. Whether a generator is eligible or not will be set out in

regulations. The regulations can only make provisions which, in the opinion of the Secretary of State, will encourage low carbon electricity generation. Therefore only low carbon electricity generation will be eligible. This would include renewable generation, nuclear generation and generation using carbon capture and storage.

87. *Subsections (7)* to *(9)* provide that regulations must be made by statutory instrument and that:

- the first time regulations are made relating to:
  - CFD notification: offer to contract on standard terms (section*14*);
  - Modification of standard terms (section*15*);
  - Information and advice (section*19*);
  - Functions of the Authority (section*20*).
- Or any regulations relating to:
  - Supplier obligation (section*9*);
  - Direction to offer to contract (section*10*);
  - CfD notifications (section*12*);
  - Allocation of CfDs (section*13*);
  - Payments to electricity suppliers (section*17*);
  - Application of sums held by a CFD counterparty (section*18*);
  - Regulations: further provision (section*21*);
  - Enforcement (section*22*);
  - Limits on costs to be incurred (section*23*).

they must be laid in draft before, and approved by affirmative resolution of, each House of Parliament.

88. *Subsection (10)* provides that regulations relating to Contracts for Difference should not be treated as a hybrid instrument. The regulations are expected to specify a private company and confer functions on it which could be regarded as adversely affecting its private interests (i.e. they would be unable to stop performing functions without amendment to the regulations), raising the possibility that they could be considered hybrid. It is not considered necessary for the regulations to be treated as hybrid because the existing duty to consult before making regulations should provide adequate protection that private interests will be fully considered.

Section 7: Designation of a CFD counterparty

89. This sets out the power allowing the Secretary of State to designate a company or a public authority, with the consent of that person, to act as the counterparty for the CFD. The counterparty will enter into and manage CFDs with eligible generators, and will act as the interface between generators and suppliers.

90. *Subsection (3)* allows the counterparty to be a registered company or a public authority. Whilst it is expected that the counterparty will be owned by Government, any designated counterparty would have access to the same rights (such as to the Supplier obligation) and be bound by the same duties under the legislation, regardless of whether it was a company and / or public authority, or whom it was owned by.

91. Under *subsection (6)* the designation of a company as the CFD counterparty can be revoked by the Secretary of State. Designation will also cease if the CFD counterparty

elects to withdraw its consent and gives 3 months prior notice to the Secretary of State of that withdrawal. *Subsections (7)* to *(10)* deal with the continuity of CFD counterparties. If the designation of a CFD counterparty were to lapse the Secretary of State must as soon as reasonably practicable designate another counterparty and make a transfer scheme under *Schedule 1* transferring all CFDs to that new counterparty. This is designed to ensure that there is always a CFD counterparty and that where a CFD counterparty ceases to be designated the contracts are transferred to a new CFD counterparty.

92. *Schedule 1* sets out the process by which the property, rights and liabilities of the CFD counterparty may be transferred from one counterparty to another, should this prove necessary either because a counterparty no longer wishes to be designated, or because it has become inappropriate for a counterparty to be designated in this role. A scheme may provide for compensation for any property that is required to be transferred where this is appropriate.

Section 8: Duties of a CFD counterparty

93. This section makes it clear that it is a duty of a person who has been designated as a CFD counterparty to comply with the regulations and any direction made under these provisions. This will include the requirement for the CFD counterparty to enter into a CFD with a generator when the Secretary of State has directed it to or the national system operator has given a notification under section 12, and to comply with any requirements designed to ensure it manages the contracts in line with the direction of the Secretary of State. The national system operator is currently National Grid Electricity Transmission PLC.

94. *Subsection (2)* also places a duty on the CFD counterparty to exercise its functions to ensure that it can meet its liabilities under a CFD. Those functions are principally those conferred under or by virtue of *section 9* (Supplier obligation) in relation to the ability of the CFD counterparty to recover sums from licenced electricity suppliers. "Liabilities" in this context includes all liabilities under a CFD. For these purposes, liabilities will exist in respect of any sums that are owed at a particular time by the counterparty under the CFD, irrespective of whether they have yet become payable in accordance with any payment provisions it contains.

Section 9: Supplier obligation

95. This places an obligation on the Secretary of State when making regulations under section 6 to include provision requiring electricity suppliers in GB and Northern Ireland to make payments to the CFD counterparty so that the body has sufficient funds to make the totality of the payments to generators that are required under CFD contracts. Suppliers may also be obliged to make payments to cover administration costs for managing the CFD counterparty. Payments may also be required in order to enable the CFD counterparty to hold sums in reserve (*subsection (2)(b)*), and to mutualise costs across suppliers to cover those not made by an insolvent or defaulting supplier (subsection *(2)(c)*). *Subsection (4)* enables the regulations to require suppliers to provide collateral.

96. *Subsection (5)* specifies that the regulations will place the CFD counterparty under a duty in relation to the collection (including enforcement) of sums that are owed to generators.

97. *Subsections (6) to (8)* enable the Supplier Obligation to be varied according to the supplier or factors in relation to a supplier (such as the amount of electricity it supplies to particular groups of consumers). It also provides for the CFD counterparty to provide notices to suppliers and to enforce such notices, and for dispute resolution arrangements.

98. *Subsection (9)* clarifies that any sum which the supplier is required to pay the Secretary of State, the investment contract counterparty or the CFD counterparty by virtue of the supplier obligation regulations and which is not paid when it is due under the regulations is recoverable as a civil debt.

Section 10: Direction to offer to contract

99. Section 10 confers a power on the Secretary of State to issue a direction to the CFD counterparty to offer a CFD to eligible generators in accordance with provisions set out in regulations. It is expected that most CFDs will be allocated to eligible generators by the national system operator, National Grid, in accordance with section 12 and any provision made using the power in section 12. However, where flexibility is needed to vary the terms for particular projects beyond what is permitted by the modification of standard terms process (section 15), the Secretary of State will allocate CFDs using the power conferred under section 10.

100. A contract will only come into being on the agreement of a generator to whom an offer is made by the CFD counterparty.

101. *Subsection (3)* requires that regulations define an "eligible generator" for CFD purposes.

102. *Subsections (6) to (8)* provide that any direction which relates to generating stations in Northern Ireland may not be made without consent of the Department of Enterprise, Trade and Investment. This will enable Northern Ireland Ministers to play a role in being satisfied that the terms to be offered to generators in Northern Ireland are suitable.

Section 11: Standard terms

103. This gives the Secretary of State power to issue and, from time to time, revise standard terms for the CFD (*subsections (1) and (2)*, respectively). This section works in concert with sections 12 to 14 to make up the standard system for CFD allocation, from application to offer of a contract.

104. *Subsection (3)* places the Secretary of State under a duty to issue or revise standard terms in accordance with provision made in regulations. *Subsection (4)* requires the Secretary of State to have regard to the matters listed in section*5(2)* when issuing or revising standard terms. *Subsection (5)* places the Secretary of State under a duty to publish standard terms as issued or revised under this section. *Subsection (7)* would allow for different standard terms to be issued for different categories of CFD (for example, for generators in Northern Ireland). *Subsection (6)* enables the Secretary of State to designate particular standard terms as terms which may not be modified under section 15.

Section 12: CFD notifications

105. This sets out how the System Operator is to notify the CFD counterparty of an allocation decision. *Subsection (1)* states that such a notification must specify the eligible generator and "such other information as may be required by the CFD counterparty for the purpose of making an offer under section*14*". *Subsection (2)* prevents a notification from being given if regulations made under section 23 (regarding maximum costs and targets) prevent it. *Subsection (3)* allows for regulations to make further provision about the circumstances in which a notification may or must be given, the kinds of information that must be specified in a notification, and appeals against decisions not to give a notification.

106. *Subsections (4), (5) and (6)* make provision for the involvement of the Department of Enterprise, Trade and Investment in the application of this section in Northern Ireland.

Section 13: Allocation of CFDs

107. This section builds on the power in section 12 and specifies the process by which the Secretary of State may make provision setting out detailed rules about the CFD allocation process. The rules are likely to be applicable to those wishing to apply for a CFD and to National Grid who, as the System Operator, will be acting as the Delivery Body.

108. *Subsection (1)* confers a power enabling the Secretary of State to make provision setting out how CFDs are to be allocated to eligible generators. *Subsection (2)* confers a power for setting the rules of allocation in an "allocation framework" – a document which will sit outside of regulations but be constrained by provision made in regulations. An "allocation framework" will be produced and published for allocation rounds, and include information about when allocation rounds will be held. 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 must be included in an "allocation framework".

109. For example, the Secretary of State may decide that it is important to investors to ensure that an "allocation framework" includes information about the budget available for a particular allocation round and may therefore require an "allocation framework" to contain this information when it is produced.

110. *Subsection (3)* confers a power enabling the Secretary of State to set out requirements on the Secretary of State. For example, the Secretary of State may stipulate in regulations for specified notice periods to be adhered to before the start of allocation rounds, and separately restrict the Secretary of State's ability to amend the allocation framework for those participants already engaged in an open allocation round. These sorts of requirements on the Secretary of State will help to provide certainty to industry that the process will not change without due warning. This is necessary to allow them to engage with the allocation process.

111. The powers in *subsections (4) to (6)* enable the Secretary of State to set out further detail of those areas that an Allocation Framework may provide. These include conferring functions on the System Operator to allow them to carry out the allocation process, the setting of targets for types or location of generation, the mechanics of competitive allocation, and allowing for calculations and determinations to be made to support the allocation of CFDs. These are all functions which may need to change at short notice, allowing the Government to respond in a timely manner to external factors, to protect budgets and to protect consumers by preventing gaming. Examples of such changes that might be necessary are responding to a sudden change in the costs of a particular technology, or allowing change to the mechanism for competitive allocation in response to lessons learned during operation.

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

Section 14: CFD notification: offer to contract on standard terms

113. This section sets out how the CFD counterparty must act upon a notification from the System Operator to offer a CFD contract. *Subsection (1)* places a duty on the CFD counterparty to offer a contract to the eligible generator 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 15.

114. *Subsection (2)* confers a power on the Secretary of State to make further provision regarding matters such as how the CFD counterparty is to apply or complete the standard terms in response to a notification and how the eligible generator to whom the offer is made may enter into a CFD as a result.

Section 15: Modification of standard terms

115. Section 15 enables the CFD counterparty to agree modifications to the standard terms with generators, on a case by case basis, pre-signature. This flexibility to make such modifications allows a wider range of eligible generators to participate in the CFD regime than would otherwise be the case. This will be because, especially in the early stages of the CFD regime, the standard terms will not be acceptable to some generators for reasons such their specific types of company, financing or debt structure, without such small modifications.

116. This flexibility is constrained in order to reduce the risk of generators 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 the CFD counterparty, following provision made in regulations. *Subsection (4)* provides for further provision to be made in regulations, including regarding the circumstances in which a generator may request a modification, the procedure to be followed in requesting a modification, and how the CFD counterparty is to make a determination on such a request.

Section 16: Sections 12 to 15: further provision

117. Section 16 confers a power enabling the Secretary of State to, when making provision under the powers in sections 12 to 15, make further provision enabling calculations and determinations to be made by such persons and in accordance with such procedure as is specified.

118. For example, in relation to section 12, section 16 enables the CFD counterparty to make determinations or calculations about what information should be included in the notification provided by the System Operator. In relation to section 14, section 16 enables the CFD counterparty to determine precisely how the information in the notification should be applied to the contract, and whether a generator's response to an offer is acceptable. Finally section 16 may also be used in relation to section 15 to enable the CFD counterparty to determine whether a generator has provided sufficient information and evidence that a modification is both minor and necessary.

Section 17: Payments to electricity suppliers

119. Section 17 enables regulations to require the CFD counterparty to make payments to suppliers. This is designed to enable payments to suppliers where the contracts provide for money to be paid to the CFD counterparty e.g. where the reference price is higher than the strike price.

Section 18: Application of sums held by CFD counterparty

120. This section enables the regulations to make provision about the allocation of sums between generators by the CFD counterparty in circumstances where the supplier obligation is not large enough to meet all of its obligations in full. In making these regulations, the Secretary of State must have regard to the principle that sums should be apportioned in proportion to the amounts which are owed, i.e. that they are pro-rated between generators *(subsection (3)).*

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

Section 19: Information and advice

122. Section 19 enables the regulations to make provision to ensure that information and advice required to make the scheme work is provided to the bodies requiring it at appropriate points, including from generators and suppliers, as well as from the

Northern Ireland system operator and Authority for Utility Regulation for the purpose of allowing the CFD to operate in Northern Ireland. It enables regulations to make provision governing the use and protection of information so received to ensure it is handled in an appropriate manner.

123. It will also allow the Secretary of State and the Regulator to monitor the scheme and for the Secretary of State to require advice from the national system operator, the CFD counterparty body and the Regulator necessary for making decisions about the running of the scheme.

Section 20: Functions of the Authority

124. Section 20 enables the regulations to confer functions upon the Authority (the regulator for the electricity markets in Great Britain) to provide advice to and make determinations for the parties to CFDs. This could include, for example, monitoring obligations under the contract such as biomass sustainability and determining whether such obligations have been met, where the Authority will be exercising the role of expert determination in relation to the contract.

Section 21: Regulations: further provision

125. This section enables the regulations to make provision to require the CFD counterparty to enter into arrangements or to offer contracts for purposes connected to a CFD, or to specify things that the CFD Counterparty can or can't do. This provision only regulates the behaviour of the CFD counterparty and does not enable the Secretary of State to vary any CFD without the consent of the generator in question.

126. *Subsection (1)(c)* enables regulations to make provision about the making of directions to the counterparty. This will enable specific directions to be given in relation to particular contracts or matters (such as where a generator has proposed a variation to the contract and the Secretary of State wishes to require the counterparty to agree to it).

127. *Subsection (3)* places a duty on the Secretary of State. The regulations that he or she makes must include such provision as he or she considers necessary to ensure that the CFD counterparty can meet its liabilities under CFDs. As set out in relation to section 8 above the reference to liabilities means all sums which are owed under a CFD.

Section 22: Enforcement

128. Section 22 enables the obligations of suppliers under regulations made under this Chapter to be enforced by the Authority in Great Britain, or the Northern Ireland Authority for Utility Regulations in Northern Ireland, as if they are relevant requirements. This means that a breach can be treated, in effect, as if it were a breach of a licence condition allowing the enforcement authorities to get an order to secure compliance, and/or impose financial penalties.

129. It also enables the system operator's functions to be enforced by the Authority.

Section 23: Limits on costs to be incurred

130. This enables the Secretary of State to make regulations setting out a limit on the cost of the scheme.

131. It also includes powers for the Secretary of State to instruct the national system operator that the maximum cost has been reached and prevent them from giving a notification to the CFD counterparty if the Secretary of State believes it may cause the maximum cost to be breached.

Section 24: Consultation

132. This section requires that the Secretary of State must consult licensed suppliers in Great Britain and Northern Ireland, the national system operator and the Authority before making or amending secondary legislation. The Department of Enterprise, Trade and Investment in Northern Ireland, and Scottish and Welsh Ministers are also required to be consulted.

Section 25: Shadow directors, etc.

133. This makes it clear that, in exercising their regulatory controls over the CFD counterparty, neither the Secretary of State nor the national system operator could be deemed to be in any way managing or controlling the CFD counterparty in such a way that would class them as, for example, "shadow directors" or principal to the CFDs (in other words that the CFD counterparty is not the agent of either the Secretary of State or the national system operator).

Section 26: Licence modifications

134. This sets out the Secretary of State's power to modify transmission and distribution licences, the standard conditions of such licences and documents maintained in accordance with conditions of such licences (such as industry codes) to allow the CFD counterparty to be provided with services (such as settlement services).

135. The powers will be used to confer consequential functions upon the national system operator to enable it to administer the CFD scheme as well as providing services to the CFD counterparty. It will also be used to make provision about settlement of payment obligations under CFDs and enable licensees to assist with the enforcement of obligations under contracts. Section 64 makes further provision about licence modifications.

Chapter 3: Capacity Market

Section 27: Power to make electricity capacity regulations

136. This section enables the Secretary of State to make regulations ("electricity capacity regulations") about the provision of capacity to meet the demands of consumers for the supply of electricity in Great Britain. *Subsection (3)* specifies that "providing capacity" means providing electricity or reducing demand for electricity. *Subsection (4)* makes clear that provision made about "reducing demand for electricity" can include provision that reducing the consumption of electricity reduces demand.

Section 28: Capacity agreements

137. This section provides that electricity capacity regulations may make provision about capacity agreements, and specifies some particular matters relating to capacity agreements about which such provision may be made.

138. *Subsection (2)* states that a capacity agreement is an instrument that can give rise to obligations for the holder of the agreement (a "capacity provider") and for electricity suppliers. It can require a capacity provider to provide capacity (i.e. provide electricity or reduce demand for electricity) and to make payments for the benefit of electricity suppliers ("capacity incentives"). A capacity provider may, for example, be required to pay a capacity incentive if their capacity was not delivering electricity in circumstances defined in or determined in accordance with regulations. In addition, all electricity suppliers may be required to make payments ("capacity payments") for the benefit of capacity providers; it is intended that the revenue payable to capacity providers under capacity agreements will be funded by electricity suppliers in this way.

139. *Subsections (2)(b)* and *(c)* allow capacity agreements to provide for capacity payments and capacity incentives to be paid to an intermediary (a "settlement body") as referred to in *subsection (4)(g).*

140. *Subsection (3)* enables electricity capacity regulations to make provision regarding the definition of "electricity suppliers" for the purposes of a capacity agreement. For example this may allow a threshold to be put in place to exclude smaller suppliers if the Secretary of State considered that it was not proportionate to require all electricity suppliers to pay for the costs of the Capacity Market.

141. *Subsection (4)* identifies the sort of provision that may be made about capacity agreements in electricity capacity regulations, including: the terms of a capacity agreement; how capacity agreements will be issued; the persons who may be a capacity provider; the circumstances in which capacity must be available; the duration of a capacity agreement; the calculation of payments associated with capacity agreements and the body that will administer those payments; the enforcement of the terms of a capacity agreement; resolution of disputes; and the circumstances in which a capacity agreement may be changed, terminated, assigned or traded.

142. *Subsections (5)(a)* and *(b)* clarify that such provision can include provision conferring functions on the national system operator to issue capacity agreements, and provision about the outcome of a capacity auction (see section 29). For example this would enable a requirement to be placed on the national system operator to issue a capacity agreement to a person whose bid is successful in a capacity auction. *Paragraphs (c)* and *(d)* enable electricity capacity regulations to set out the eligibility criteria for persons before they may enter a capacity auction or become a capacity provider. In particular, those persons may be required to meet certain conditions, or to satisfy the national system operator of certain matters, as provided for in electricity capacity regulations.

143. *Subsections (6)(a)* and *(b)* enable regulations to include provision for the calculation and determination by the settlement body, or by another person specified by the regulations, of the amounts of capacity payments and capacity incentives due from or owed to electricity suppliers or capacity providers.

144. *Subsection (7)* clarifies that regulations may include, in particular, a requirement for a person to consent to an inspection of plant or premises. For example this may be necessary to determine whether the person is capable of providing capacity under a capacity agreement.

Section 29: Capacity auctions

145. This section enables the Secretary of State to make provision in electricity capacity regulations for the determination on a competitive basis (i.e. through capacity auctions run by the national system operator) of who may be a capacity provider.

146. *Subsection (2)* allows the Secretary of State to make provision for the national system operator to run capacity auctions, the circumstances in which a capacity auction is to run, the intervals at which auctions are to take place and the process by which auctions are to be run. For example the Secretary of State may specify the process by which bids into the capacity auction are assessed and how it will be decided which bids are successful. *Subsection (2)(c)* enables regulations to make provision about the amount of capacity in relation to which a determination may be made, for example how the total amount of capacity required from a particular capacity auction is to be determined; *subsection (4)* specifies that the function of determining that amount may be conferred on the Secretary of State or the Authority but not on any other person.

147. *Subsection (3)* provides for electricity capacity regulations to require the national system operator to prepare and publish rules or guidance about capacity auctions, and for the process to be followed in doing so.

148. *Subsection (5)* clarifies that provision made within *subsection (2)(f)*, which relates to the manner in which the Secretary of State exercises any function in relation to capacity auctions, may include provision about the frequency of any decision, the persons who will be consulted and the matters to be taken into account. For example the Secretary of State may take a decision on the amount of capacity which is to be sought through a particular capacity auction, on an annual basis, taking into account information or advice relating to available capacity and consumer demand.

Section 30: Settlement body

149. In the event that a settlement body is appointed to administer capacity payments and capacity incentives, this section enables regulations to require electricity suppliers or capacity providers to make payments to the settlement body for certain ancillary purposes. Under *subsection (1)*, payments may be required to cover the settlement body's administration costs, to enable it to hold sums in reserve, and to mutualise payments across suppliers to cover those not made by an insolvent or defaulting supplier. *Subsection (3)* also enables the regulations to require electricity suppliers or capacity providers to provide collateral. *Subsections (4)* and *(5)* enable regulations to include provision for the determination by the settlement body or by another person specified by the regulations, of the amounts of payments due from electricity suppliers or capacity providers, under this section and the form and terms of any collateral.

Section 31: Functions of the Authority or the national system operator

150. This section enables the Secretary of State to make provision in electricity capacity regulations to confer functions on the Authority or the national system operator.

Section 32: Other requirements

151. This section enables the Secretary of State to make provision to impose other requirements, in addition to those particularly associated with capacity agreements, on licence holders, persons carrying out functions under the capacity market and any other person who is, or has ceased to be, a capacity provider.

152. *Subsection (3)* sets out that such requirements may, in particular, include requirements relating to the manner in which functions are to be exercised, restrictions on the use of generation plant and participation in a capacity auction, and the inspection of plant or property (to supplement the provision in section 28(7)). For example, the Secretary of State may require a person carrying out functions under the capacity market to comply with requirements regarding a particular format, such as to report on its activities, or provide advice. In relation to restrictions on the use of generation plant and participation in a capacity auction, the Secretary of State could, for example, prevent any part of a generating plant to which a capacity agreement does not apply to be used in a way that undermined the efficient operation of the capacity market.

Section 33: Electricity capacity regulations: information and advice

153. This section enables the Secretary of State to make provision in electricity capacity regulations for the provision and publication of information including: to require the Authority and the national system operator, or any other person specified in the regulations to provide information or advice; for the Authority and the national system operator to require the provision of information for a purpose specified in the regulations; to require capacity providers and electricity suppliers to share information with one another and with any person named in the regulations; for the publication of information or advice; for the classification and protection of commercial or sensitive information; and for the enforcement of these requirements to provide, publish or protect information or advice.

154. These provisions mean, for example in relation to *subsection (2)(b)*, that the national system operator could require the provision of any information specified in the

regulations regarding the operation of the Capacity Market necessary to enable it to administer it, and to report to the Secretary of State on this. In addition, the Secretary of State could for instance, by *subsection (2)(d)*, provide for a body such as the national system operator or an expert group to publish information regarding the operation of the Capacity Market in order to support transparency and accountability of the participants and the administration. Some information, for example relating to forecasts of available capacity some years ahead, may be based upon commercially sensitive or confidential information. *Subsection (2)(e)* enables regulations to include provision about the protection of any such information.

Section 34: Power to make capacity market rules

155. This section confers power on the Secretary of State to make capacity market rules, which may contain any provision that may be made by electricity capacity regulations except for the matters referred to in *subsection (2)*. The matters which may not be included in capacity market rules include, in particular, provision about the circumstances in which, and the amount of capacity for which, a capacity auction is to be held, and provision about the calculation and settlement of payments.

156. By virtue of *subsection (3)*, electricity capacity regulations may confer power to make capacity market rules (which includes power to amend, add to or revoke such rules) on the Authority. Thus, the power in this section enables the capacity market to be implemented partly by means of an instrument which the Authority may be given power to add to or amend in future.

157. If electricity capacity regulations give the Authority power to make capacity market rules, *subsection (4)* provides that the regulations must include a condition requiring the Authority to consult before exercising the power.

158. *Subsection (5)* requires such regulations to secure that the Authority must obtain the Secretary of State's consent on each occasion that it seeks to make capacity market rules which confer functions on itself.

159. Supplementary provisions about capacity market rules are contained in sections 41 and 42.

Section 35: Provision about electricity demand reduction

160. *Subsection (1)* applies this section when electricity capacity regulations made under the power in section 27 relate to the provision of capacity which is created by reducing demand for electricity. Where this is the case, *subsections (2) and (3)* of this section apply.

161. *Subsection (2)* enables the Secretary of State to confer functions on a person or body for the purposes of, for example, administering an electricity demand reduction regime. In relation to the capacity market, section 31 allows the Secretary of State to confer functions on the national system operator (or the Authority). Where provision is made in electricity capacity regulations relating to reducing demand by reducing electricity consumption, it may not be appropriate to confer functions on the national system operator; another person or body may be identified and regarded to be better placed to, for example, administer the electricity demand reduction regime. To cater for this possibility *subsection (2)* enables the Secretary of State to confer functions on a person or body for this purpose and makes clear that the person or body appointed does not have to be the national system operator.

162. *Subsection (3)* ensures that where the power in *subsection (2)* is exercised the references to the national system operator in the provisions listed in *paragraphs (a)* to *(e)* are construed as references to the person or body appointed under *subsection (2)*. The effect of this provision is to ensure that the powers which might be provided to the

national system operator are equally applicable to a person or body appointed under *subsection (2)* for an electricity demand reduction regime.

Section 36: Enforcement and dispute resolution

163. This section enables the Secretary of State to make provision in electricity capacity regulations and capacity market rules about enforcement and the resolution of disputes, including conferring functions on any public body or any other person.

164. *Subsection (1)* enables electricity capacity regulations to include provision about enforcement of obligations contained either in the regulations or in capacity market rules, while *subsection (2)* only permits capacity market rules to make provision about the enforcement of obligations contained within the rules.

165. *Subsection (4)* clarifies that such provision can include powers to impose financial penalties, provision for requirements imposed by the regulations or rules to be enforceable by the Authority using the enforcement regime set out in the Electricity Act 1989, for reference to arbitration and for appeals.

Section 37: Licence modifications for the purpose of the capacity market

166. This section enables the Secretary of State to make licence modifications and to amend electricity industry codes (which are documents maintained under licences), for the purposes of a Capacity Market. Industry codes (such as the Balancing and Settlement Code, made under the standard conditions of the electricity transmission licence) generally contain provisions relating to the functioning of the electricity industry and electricity markets. They also ordinarily contain provision about the procedure for their modification, usually involving the participation of the parties to the code and the Authority.

167. *Subsection (1)* allows the Secretary of State to amend the conditions of generation, transmission, distribution, supply and interconnection licences, electricity industry codes and agreements that give effect to industry codes.

168. *Subsection (2)* allows the Secretary of State to provide for a new document to be required to be prepared and maintained in accordance with the conditions of a licence. This would enable the Secretary of State to create a new industry code rather than modifying an existing one, for example to set out the arrangements governing the settlement of payments relating to capacity agreements. This subsection also enables a licence or code modification to confer functions on the national system operator.

169. *Subsection (3)* enables provisions included in a licence or industry code by a modification made under this section to include any provision of a kind that can be made in electricity capacity regulations, to make different provision for different cases, and confirms that provision need not relate to the activities that the licence authorises. For example modifications to a code may make different provision for different types of capacity (such as electricity generation in contrast to demand side response technologies) or provide for different capacity agreements to apply for different lengths of time.

170. *Subsections (4)* and *(5)* require the Secretary of State to consult licence holders, the Authority and any other person he or she considers appropriate before making modifications and confirms that consultation that occurs before the passing of the Act will satisfy this requirement.

171. Section 64 makes further provision about licence modifications.

Section 38: Amendment of enactments

172. This section enables the Secretary of State to: amend or repeal section 47ZA of the Electricity Act 1989 regarding the annual report by the Authority on security of

electricity supply; amend section 172 of the Energy Act 2004 regarding the annual report on security of energy supplies; amend section 25 of, and Schedule 6A to, the Electricity Act 1989 regarding enforcement of obligations of regulated persons (i.e. to supplement section 36)); and to make consequential amendments to any other enactment as the Secretary of State considers appropriate as a consequence of provision made under this Chapter, including to repeal or revoke such enactments.

Section 39: Principal objective and general duties

173. This section provides that sections 3A to 3D of the Electricity Act 1989, which set out the principal objective and general duties of the Secretary of State and the Authority, apply to the functions of the Authority under or by virtue of this Chapter.

Section 40: Regulations under Chapter 3

174. This section sets out how the Secretary of State can use the powers to make regulations under this Chapter and the process that must be followed.

175. *Subsection (1)* enables the Secretary of State to make different provisions in regulations for different cases or circumstances. For example, this power might be used to apply different eligibility criteria to capacity provided using different technologies. It also enables the Secretary of State to make regulations including provisions of an incidental, supplementary, consequential or transitional nature.

176. *Subsections (2)* and *(3)* require that the Secretary of State must consult the Authority, any person who is a holder of a licence to supply electricity under section 6(1)(d) of the Electricity Act 1989 and other persons that he or she considers it appropriate to consult before making any regulations under this Chapter and confirms that this requirement can be satisfied by consultation before the passing of the Act.

177. *Subsections (4)* to *(7)* provide that regulations must be made by statutory instrument and that, subject to two exceptions, any regulations made under Chapter 3 must be laid in draft before, and approved by affirmative resolution of, each House of Parliament.. Exceptions are made for electricity capacity regulations which only make provision about information and advice (other than the first regulations making such provision), and regulations under section 38 which do not amend primary legislation; these are subject to negative resolution.

178. *Subsection (8)* sets out that the regulations relating to the Capacity Market should not be treated as a hybrid instrument.

Section 41: Capacity market rules: procedure

179. This section describes the procedures which must be followed in making capacity market rules. *Subsections (1)* to *(6)* specify that the first set of rules must be laid in draft before both Houses of Parliament for 40 days, and is subject to the negative procedure. *Subsection (9)* specifies that subsequent capacity market rules or amendments must be laid before Parliament and published as soon as is reasonably practicable after they are made.

180. *Subsection (7)* specifies that the Secretary of State must consult certain persons prior to making capacity market rules: the Authority; any licence holder under section 6(1)(d) of the Electricity Act 1989; any capacity provider; and any other person the Secretary of State considers it appropriate to consult. *Subsection (8)* allows consultation undertaken before or after the passing of the Energy Act 2013, to count towards the duty in *subsection (7)* when making capacity market rules.

Section 42: Capacity market rules: further provision

181. This section confers powers for capacity market rules to make the additional changes required to enable them to function. In particular *subsection (1)* allows for: incidental,

supplementary and consequential provision; transitory or transitional provision or savings' provision for different cases, circumstances or purposes; and to make provision subject to exceptions.

182. *Subsections (2)* and *(3)* have the effect that, if electricity capacity regulations give the Authority power to make capacity market rules, that includes power to amend, add to or remove capacity market rules made by the Secretary of State, subject to any provision made by the regulations.

Section 43: Pilot scheme for electricity demand reduction

183. *Subsection (1)* of this section enables the Secretary of State to spend money on an electricity demand reduction pilot programme. Before proposing a particular design for an electricity demand reduction regime, the Secretary of State may wish to explore particular design options by running a pilot programme to test different options. This spending power enables the Secretary of State to spend money for these purposes.

184. *Subsections (2) to (4)* of this section add a statutory reporting requirement for any pilot schemes. *Subsection (2)* sets out a duty to review the operation and effectiveness of any pilot scheme, while *subsection (3)* requires the results of that review to be reported to Parliament. This can be done through a written report laid in both Houses, or, if the Secretary of State thinks it should be done orally, by making a statement. *Subsection (4)* specifies that this should be done as soon as reasonably practicable after the conclusion of any pilot.

Chapter 4: Investment contracts

Section 44: Investment contracts

185. In keeping with fact that investment contracts are intended to be entered into during a relatively short period of time and are therefore a transitional measure before the enduring regime is fully implemented, the detailed provisions relating to them are contained in Schedule 2 to the Act. This section gives effect to this Schedule.

Schedule 2, Part 1

Paragraph 1: Meaning of "investment contract"

186. This paragraph defines what an "investment contract" must be for the purposes of this Schedule. It does this by laying down, for example, requirements about who the parties are to be to such contracts, about the content of contracts, and requirements about being laid before Parliament. The restrictions here are important because Parts 2 to 4 of the Schedule contain a number of regulation-making powers that may be exercised only in relation to contracts that meet the defining characteristics of "investment contracts", and Part 5 of the Schedule provides for the Secretary of State to incur expenditure in connection with "investment contracts".

187. Specifically, in terms of their contents and nature, an investment contract is a contract with an electricity generator (as defined in *sub-paragraph (3)*) which:

- is entered into by the Secretary of State before the 31st December 2015 or if earlier, the date on which regulations are first made under section 10(3) defining an "eligible generator". An "eligible generator" is the type of person who may benefit from a CFD under the regulations relating to the enduring regime;
- has been entered into with the consent of the (Northern Ireland) Department of Enterprise, Trade and Investment if it relates to an electricity generating station in Northern Ireland (which is defined to include territorial waters – see *sub-paragraph (3)*, as well as *sub-paragraph (1)(b)*);

- contains an obligation for the parties to make payments to each other based on the difference between a strike price and a reference price in relation to electricity generated (see *sub-paragraph (1)(c)* and, for a definition of these prices, *sub-paragraph (3)*). Where the investment contract is entered into before the coming into force of Schedule 2, this payment obligation must be expressed to be conditional on Schedule 2 being in force (see *sub-paragraph (2)*).

188. It is worth noting here that an electricity generator is defined in *sub-paragraph (3)* in a way to cover not simply someone who is directly involved in the generation of electricity, but also and more broadly speaking (for example) a person intending, at the time the contract is entered in to, to establish, or participate in the operation of a new or altered electricity generating station, and any person who has an interest in a company consisting of these aforementioned persons. Under Schedule 1 to the Interpretation Act 1978, "person" is defined to include persons corporate, such as companies. If an investment contract is entered into with more than one person, the payment obligation referred to in *sub-paragraph (1)(c)* must be an obligation on a party that is an electricity generator as defined in *sub-paragraph (3)* and the Secretary of State (see *sub-paragraph (4)*).

189. A contract is only an "investment contract" if it has been laid before Parliament, accompanied by a statement meeting the requirements in *sub-paragraph (6)* (see *sub-paragraphs (1)(d)* and *(5)(a)*). However, it is not necessarily the case that the whole contract must have been laid before Parliament in order for it to constitute "an investment contract". *Sub-paragraph (5)(b)* means that certain confidential or commercially sensitive information which is contained in the contract may be omitted from it when it is laid before Parliament (see also *paragraph 3* of the Schedule for the definition of "confidential information").

190. The statement that must be laid in Parliament together with the contract needs to cover various matters, to provide a measure of transparency about the decision-making process. For example, the statement will need to specify that the Secretary of State considers that payments which would be made under the investment contract which is being laid before Parliament would encourage low carbon electricity generation and that without the contract there is a significant risk of this electricity generation being delayed, or of it not occurring at all. Low carbon electricity generation is defined in *sub-paragraph (7)* to mean electricity generation which in the opinion of the Secretary of State will contribute to a reduction in emissions of greenhouse gases, as defined in section 92(1) of the Climate Change Act 2008. "Greenhouse gases" includes, for example, carbon dioxide and methane.

191. In addition, the Secretary of State must summarise in any statement the regard he or she has had in deciding to enter into a contract to the matters set out in section *5(2*) of the Act (see *sub-paragraph (6)(c)*) – namely, the likely costs to consumers of ensuring security of supply to consumers in the United Kingdom, certain statutory targets relating to greenhouse gas emissions contained in the Climate Change Act 2008 and the target relating to the use of renewable energy set out in Article 3(1) and Annex 1 to "the renewable directives" (see the definition in section*5(3)*).

192. Finally (though publication here is not a defining characteristic of an investment contract), the Secretary of State is obliged to publish any investment contracts in the form in which they have been laid before Parliament (see s*ub-paragraph (8)*).

Paragraph 2: Varied investment contract

193. Since investment contracts are contracts, they may be varied by agreement of the parties to them (though regulations under *paragraphs 14(2)* and *(3)* may impose restrictions on a counterparty to agree variations). The effect of the paragraph here is to ensure that if an investment contract is amended by the parties, and the amendment will (in the Secretary of State's opinion) result in a material increase in the likely costs to electricity

consumers, the amended contract must be laid before Parliament in order to constitute an "investment contract" for the purposes of Schedule 2. In addition, when a varied contract is laid before Parliament, it must also be accompanied by a statement as to why the Secretary of State considers the amendment is appropriate, having regard to the likely costs to such consumers.

194. *Sub-paragraph (4)* should be noted because it means that where an investment contract is amended in accordance with its terms, there is no need to lay the amended contract before Parliament. For example, if the strike price were to be increased in accordance with a procedure set out in the contract following a change of law, then there would be no need to follow the procedures required under this paragraph.

195. As with the case of an original investment contract, an amended contract must be published (see *sub-paragraph (3)*), once confidential information has been redacted from it (as well as in the case of when an amended contract is laid before Parliament – see *paragraph 2(2)(b)*and *(3)*).

196. The purpose of the provision here is to ensure that Parliament is informed of any changes outside the terms of an investment contract that are likely to adversely impact on consumers.

Paragraph 3: Confidential information

197. This paragraph defines the "confidential information" which may be removed from an investment contract or varied investment contract before it is laid before Parliament and published in accordance with *paragraph 1*or *2*.

198. "Confidential information" is defined by reference to the terms of an investment contract. Where an investment contract contains a term that information in the contract should not be disclosed, that information is to be excluded from publication provided that in agreeing this term against disclosure the Secretary of State considered that the information in question either constituted a trade secret, or that the disclosure of the information would be likely to prejudice the commercial interests of any person or constitute an actionable breach of confidence. However, it is not possible (given *paragraph 3(3)(a)*) for the investment contract to cover non-disclosure of the strike price or reference price.

199. In effect what this paragraph means, in conjunction with *paragraph 1(5)(b)* is that, where it comes to laying an investment contract before Parliament, any confidential information (as covered by the contract) must be excluded from publication.

200. It is anticipated that the vast majority of information within an investment contract will be included in the contract that is laid in Parliament and published. However, it is possible that some investment contracts may incorporate information that is commercially sensitive, such as detailed financial information belonging to the electricity generator, the disclosure of which could prejudice their commercial interests. This paragraph therefore allows for such information to be excluded from contracts that are laid in Parliament or published.

Paragraph 4: Interpretation for the purposes of this Schedule

201. This paragraph sets out how certain terms are to be interpreted in this Schedule. For example, it states that "CFD" and "CFD counterparty" should be construed in accordance with provisions in Chapter 2 of Part 2 of the Act (sections 6(2) and 7(2) respectively), and that "electricity supplier" means a person who is a holder of a licence to supply electricity in either Great Britain or Northern Ireland. Definitions for other terms used in the Schedule (and elsewhere in the Act) are to be found in section 151.

202. The paragraph also specifies that references to a CFD counterparty in the Schedule (apart from references in *paragraphs 9(1)(c)*, *9(1)(d)*, and *16)* only apply when the CFD counterparty is acting as a counterparty in relation to an investment contract – in other

words, where any property, rights or liabilities under a contract have been transferred to the CFD counterparty by a scheme under *paragraph 16*.

Paragraph 5: Investment contract counterparty

203. This paragraph sets out a power allowing the Secretary of State to designate (by order) a registered company or a public authority, with their consent, to act as the counterparty for an investment contact (an "investment contract counterparty"). Whilst it is expected that the counterparty will be owned by Government, any designated investment contract counterparty would have access to the same rights (such as to the supplier obligation) and be bound by the same duties under the legislation, regardless of whether it was a company and / or public authority, or whom it was owned by.

204. The property, rights and liabilities under an investment contract entered into by the Secretary of State can be transferred to a person designated as an investment contract counterparty through a scheme under *paragraph 16*.

205. The designation of a company as an investment contract counterparty can be revoked by the Secretary of State by order, or if the investment contract counterparty elects to withdraw its consent to being designated by giving 3 month's notice. *Sub-paragraph (6)* provides that, as soon as reasonably practicable after a designation ceases to have effect, the Secretary of State must make a transfer scheme under *paragraph 16* to transfer the rights and liabilities of any investment contracts to which the person was a party to another counterparty. Additionally, under *sub-paragraph (8)* regulations made under *paragraph 6* may specify a period of time for which a person who has ceased to be an investment contract counterparty must continue to be treated as a counterparty for the purpose of regulations under this Schedule. The underlying purpose in the case of *sub-paragraphs (6)* and *(8)* is to have provision in place to minimise any disruption to obligations under investment contracts, including payments, in the event of a designation of an investment contract counterparty being revoked.

206. As explained in the 'Summary and background' section of the Explanatory Notes to Chapter 4, there will be a duty to transfer investment contracts to a CFD counterparty once one has been designated and certain other conditions have been met. However, in the event that a CFD counterparty is not designated, this paragraph enables another company or public authority to be designated to act as a counterparty for investment contracts.

Schedule 2, Part 2

207. Part 2 principally provides the Secretary of State with regulation-making powers in connection with investment contracts. These powers are very similar to those in Chapter 2 relating to contracts for difference. A general regulation-making power is provided by *paragraph 6*, with that power being further particularised in other paragraphs in Part 2 and in *paragraph 14(3)*and *(4)* and *16(2)* (as well as *paragraph 5(8)*and in the definition of "electricity supplier" in *paragraph 4*). The requirements about who must be consulted before regulations are made are set out in *paragraph 13*. Regulations are to be made either under the affirmative resolution procedure if they are the first regulations which make provision falling within *paragraph 10 or 11*, or any other regulations which make provision falling within other paragraphs of Parts 1 to 3 of Schedule 2; see *sub-paragraph (5)*), or the negative resolution procedure for all other regulations (see *sub-paragraph (6)*). *Paragraph 6(7)* provides that regulations relating to investment contracts should not be treated as a hybrid instrument.

Paragraph 7 – Supplier obligation

208. *Paragraph 7* expressly provides regulation-making powers to impose financial obligations on licensed electricity suppliers – supplier obligation(s). Under *sub-paragraph (1)*, regulations may impose obligations on licensed electricity suppliers in GB and Northern Ireland (see the definition of "electricity supplier" in *paragraph*

4(1)) to make payments to the Secretary of State to meet obligations under investment contracts. S*ub-paragraph (2)* requires that regulations impose obligations on licensed suppliers to make payments to an investment contract counterparty, or a CFD counterparty (see *paragraph 4(1)*for definitions of these counterparties – hereafter referred to as "counterparties") to meet obligations under investment contracts. Licensed suppliers may also be obliged to make payments for certain other purposes under regulations – for example, to cover costs associated with administering investment contracts, and to enable the Secretary of State or a counterparty to hold sums in reserve (see *sub-paragraph (3)*), or to mutualise costs across (other) licensed suppliers where another becomes insolvent or defaults. S*ub-paragraph (6)* requires that any regulations under *sub-paragraphs (1)* or *(2)* must include a duty in relation to the collection of payments.

209. Other regulation-making powers expressly include imposing requirements on suppliers to provide collateral to the Secretary of State or to a counterparty (*sub-paragraph (5)*). They also cover powers for regulations to set out how the Secretary of State or a counterparty is to calculate or determine the amounts owed under regulations or the financial collateral to be provided by electricity suppliers (see *sub-paragraphs (7)(b)* and *(8)*). For example, regulations might provide powers to the counterparty to require collateral from suppliers according to such amounts as the counterparty calculates, but to require the counterparty to make its calculation of the amount of collateral required by reference to the size of a supplier or the amount of electricity it provides to certain consumers.

210. *Sub-paragraphs (7)(c)* and *(d)* expressly provide regulation-making powers to make provision about the issuing and enforcement of notices (issued by the Secretary of State or a counterparty) which require the payment of amounts owed under regulations here or the provision of collateral. *Sub-paragraph (9)* covers regulations making connected provision, for example, on dispute resolution about notices and the payment of interest for late payment. Note that the powers in *paragraph 12* of this Schedule would allow regulations to make provision for the requirements of notices here to be enforced by the Authority or the Northern Ireland Authority for Utility Regulations as if the requirements were relevant requirements on a regulated person. See the text below for explanation of *paragraph 12*.

211. *Sub-paragraph (10)* clarifies that any sum which the supplier is required to pay the Secretary of State, the investment contract counterparty or the CFD counterparty by virtue of the supplier obligation regulations, and which is not paid when it is due under the regulations, is recoverable as a civil debt.

Paragraph 8: Payments to electricity suppliers

212. This paragraph expressly enables regulations to require the Secretary of State, an investment contract counterparty, or a CFD counterparty to make payments to licensed electricity suppliers. The underlying purpose of the power is to ensure that regulations can require that payments are made to licensed suppliers (where for example the reference price is higher than the strike price) and in circumstances where regulations are made imposing the supplier obligation under *paragraphs 7(1)*or*7(2)*.

Paragraph 9: Application of sums

213. *Paragraph 9* is concerned with providing regulation-making powers to cover two broad areas. First, to ensure that regulations may make provision about the apportioning of money between generators by the Secretary of State or a counterparty where the amount collected from licensed suppliers is insufficient to collectively meet the liabilities under investment contracts or CFDs in full. In making these regulations, the Secretary of State must have regard to the principle that sums should be apportioned in proportion to the amounts which are owed, i.e. that they are pro-rated.

214. Secondly, *sub-paragraphs (4) and (5)* are concerned about conferring regulation-making powers to control how monies received by a counterparty or by the Secretary of State are used – specifically, whether or not they need to be paid into the Consolidated Fund.

Paragraph 10: Information and advice

215. This paragraph allows for regulations to be made imposing requirements about providing information or publishing it, as well as about how information is to be protected (see *sub-paragraphs (1) and (2)(f)*). The paragraph is intended, in part, to ensure that provision can be made in regulations so that there is a sufficient flow of information and advice for the purposes of administering and managing investment contracts. Therefore, for example, the regulations can require information to be provided to the Secretary of State or a counterparty from suppliers or generators (see *paragraph 10(2)(c)* and *(e)*). In addition the powers will allow provision to be made in regulations to permit the Secretary of State and the regulators in Great Britain and Northern Ireland to gather information together about investment contracts, in order to monitor their use and inform their wider decision-making.

Paragraph 11: Functions of the Authority

216. This paragraph provides an express power for regulations to confer functions, for two purposes, on the Authority (see the definition of "Authority" in section 151). The Authority is the regulator for the electricity markets in Great Britain. However, as a statutory body, it only has power to do those things which legislation confers a power on it to do.

217. The two purposes are to provide advice to, and to make determinations for, the parties to investment contracts. Therefore, for example, regulations could empower the Authority to monitor the performance of obligations under an investment contract relating to biomass sustainability (such as the type or mix of fuels used in an electricity generating station) and to determine for the parties whether such obligations have been met.

Paragraph 12: Enforcement

218. This paragraph provides an express regulation-making power in relation to the enforcement of obligations in regulations made under Schedule 2. Specifically, regulations may permit requirements imposed on suppliers to be enforced by the Authority in GB, or the Northern Ireland Authority for Utility Regulations in Northern Ireland, as if they are relevant requirements imposed on a regulated person.

219. What this means, in effect, is that regulations may treat a breach of a requirement imposed under them as akin to a breach of a licence condition in relation to certain enforcement powers. For example, sections 25 to 27A of the Electricity Act 1989 permit the Authority to make orders to secure compliance with licence conditions, and/or to impose financial penalties for their breach. Regulations could apply these enforcement powers in relation to breaches of requirements imposed under them as if they were breaches of licence conditions.

Paragraph 13: Consultation

220. *Paragraph 13* imposes requirements on the Secretary of State about who he or she must consult before making regulations under Schedule 2 – with *sub-paragraph (8)* expressly providing that any required consultation may take place before or after enactment of the Act.

221. As a broad rule, the Secretary of State is required to consult those persons who will be affected by specific regulations, as well as the devolved administrations in Northern Ireland, Scotland and Wales. For example, electricity suppliers are required to be consulted on regulations under *paragraphs 7*, *8*, *9* or *14(3)*.

Schedule 2, Part 3

Paragraph 14: Duties and liabilities of an investment contract counterparty and a CFD counterparty

222. This paragraph allows for regulations to tightly define and limit the scope of the behaviour of an investment contract counterparty, or a CFD counterparty which is acting as a counterparty in relation to an investment contract.

223. The regulation-making power is designed to ensure that controls can be imposed on counterparties to ensure that suppliers are properly protected from potential for increased costs due to variation of contracts, whilst still enabling decisions to be made by the Secretary of State to permit variation where it is appropriate to do so. This paragraph only covers regulation of the behaviour of the counterparty and does not enable the Secretary of State, through regulations, to vary any investment contract without the consent of the generator in question.

224. *Sub-paragraph (2)* places a duty on an investment contract counterparty or CFD counterparty to exercise its functions to ensure that it can meet its liabilities under an investment contract. Those functions are principally those conferred under or by virtue of *paragraph 7* (supplier obligation) in relation to the ability of the CFD counterparty or investment contract counterparty to recover sums from licenced electricity suppliers. "Liabilities" in this context includes all liabilities under an investment contract. For these purposes, liabilities will exist in respect of any sums that are owed at a particular time by the counterparty under the investment contract, irrespective of whether they have yet become payable in accordance with any payment provisions it contains.

225. *Sub-paragraph (3)(c)* enables regulations to make provision about the making of directions to an investment contract counterparty or CFD counterparty. This will enable specific directions to be given in relation to particular contracts or matters (such as where a generator has proposed a variation to the contract and the Secretary of State wishes to require the counterparty to agree to it).

226. *Sub-paragraph (5)* places a duty on the Secretary of State. The regulations that he or she makes must include such provision as he or she considers necessary to ensure that the investment contract counterparty or CFD counterparty can meet its liabilities under investment contracts. As set out in relation to *sub-paragraph (2)* above the reference to liabilities means all sums which are owed under an investment contract.

Paragraph 15: Shadow directors

227. This paragraph makes it clear that, as a result of exercising any powers conferred by or under Schedule 2 (such as those given by regulations under *paragraph 14(3)*) over an investment contract counterparty or CFD counterparty, the Secretary of State is not to be regarded as, for example, a director or shadow director of these bodies or an agent of them or their principal.

228. The purpose of this provision is to limit the potential liabilities and duties that could otherwise accrue to the Secretary of State (such as under the Companies Acts or the Insolvency Act 1986) were he or she to be treated, for example, as shadow director of these bodies. This is considered to be appropriate since the powers the Secretary of State will be exercising under the regulations will be exercisable in the public interest.

Schedule 2: Part 4

Paragraphs 16-18: Transfers

229. The above paragraphs provide powers to the Secretary of State, by transfer scheme, to transfer the property, rights and liabilities under an investment contract from the

Secretary of State to an investment contract counterparty or a CFD counterparty, and from one counterparty to another.

230. *Paragraph 16* sets out the broad power to make one or more transfer schemes and contains provision on how schemes are to take effect. This paragraph also introduces a duty to make a transfer scheme to transfer investment contracts from the Secretary of State or an investment contract counterparty to the CfD counterparty once three conditions are satisfied: that the CfD counterparty has been designated, the investment contract provisions in the Act have expired (31 December 2015 or earlier if an eligible generator has been defined under section 10(3)), and supplier obligation regulations under section 9 are in place to collect payments from suppliers. The duty does not apply to the extent that the Secretary of State considers it is appropriate in all circumstances to dis-apply it.

231. *Paragraph 17*particularises the powers to make transfer schemes – for example, a scheme could make provision that in the case of any legal proceedings concerning an investment contract that is transferred, that the new counterparty body is to be substituted as a party (see *paragraph 17(1)(c)*). *Paragraph 18* gives the Secretary of State the power to pay compensation to persons whose interests are adversely affected by a transfer scheme.

232. Supplementary provision is made in section 153 which relates to the powers to make schemes here. For example, powers are conferred to modify schemes.

233. The powers ensure that over the lifetime of an investment contract there is a mechanism in place to ensure that if an existing counterparty ceases to be suitable or willing to act as such, the investment contract can be transferred to another person designated as a counterparty. The Secretary of State is under a duty, by virtue of *paragraph 5(6)* and section 7, to ensure that where a counterparty ceases to be a counterparty, the property, rights and liabilities under any investment contracts are transferred to a new counterparty as soon as reasonably practicable.

Schedule 3: Part 5

Paragraph 19: Licence modifications

234. *Paragraph 19* provides the Secretary of State with powers to modify generation, transmission and distribution licences, the standard conditions of such licences and documents maintained in accordance with conditions of such licences (such as industry codes). There are two purposes for which the powers are exercisable (see *sub-paragraph (2)*) – which relate to the provision of services or enforcement. For example, the powers may be used to make amendments to the Balancing and Settlement Code (BSC) (which is a document falling within *sub-paragraph (1)(c)*) to enable the BSC company to provide settlement services to the Secretary of State, an investment contract counterparty or a CFD counterparty. Or new licence conditions could be imposed to assist in the enforcement of obligations under investment contracts were contractual remedies thought insufficient to provide protection against abuse.

235. The powers to make licence modification here are supplemented by section 64, which also contains requirements of the procedures that need to be followed in connection with modifications.

Paragraph 20: Expenditure

236. *Paragraph 20* provides Parliamentary authorisation for certain items of expenditure by the Secretary of State in connection with investments contracts. The expenditure covered includes expenditure incurred for the purposes of obtaining advice and assistance in relation to investment contracts (for example, to engage technical advisers to assess a generator's construction costs). The paragraph would also authorise, for

example, financial assistance given to an investment contract counterparty to assist with set-up costs or costs which the Secretary of State might incur in establishing one.

Chapter 5: Conflict of interest and contingency arrangements

Section 45: Modifications of transmission and other licences: business separation

237. *Subsections (1) to (5)* of this section provide that the Secretary of State may modify the conditions of existing electricity licences and codes for the purposes of imposing business separation measures between "system operation functions" (or one or more individual system operation functions), and other functions. But he or she can only do this where it is necessary or desirable as a result of new functions being given to the national system operator in respect of electricity market reform.

238. *Subsection (3)* defines "system operation functions" so as to include system operation functions authorised under a transmission licence and "EMR functions". *Subsection (10)* subsequently defines "EMR functions" as functions conferred by or by virtue of Chapter 2, Chapter 3 or Chapter 4 – being the delivery functions conferred on the national system operator in relation to contracts for difference, the capacity market and investment contracts.

239. *Subsection (5)* requires the Secretary of State, in exercising this power, to consider the possible impacts it would have on the efficient and effective operation of the electricity system.

240. *Subsection (6)* provides a list of the types of measures this could include, for example:

- legal separation: requiring a separate subsidiary to carry out EMR functions;
- limiting the control or influence which a parent company or other subsidiary can exercise over the body which carries out EMR functions;
- requiring functions to be carried out in separate locations, on separate IT systems or by separate employees;
- requiring separate accounts to be produced, and
- requiring information separation between EMR and/or system operation functions, and other parts of the national system operator's business.

241. *Subsection (7)* gives the Secretary of State power to require the national system operator to produce annual compliance reports concerning the separation measures.

Section 46: Power to transfer EMR functions

242. This section confers a power on the Secretary of State to transfer the delivery functions for the CFD and capacity market schemes and those relating to investment contracts ("EMR functions") to a new delivery body in certain situations.

243. *Subsection (1)* confers the power to transfer the EMR functions from the national system operator to a different delivery body. The power is exercisable by negative resolution order (see *subsections (6)* and *(7)* of section 47).

244. *Subsection (2)* provides that the EMR delivery functions can be transferred in five circumstances.

- where the national system operator requests a transfer;
- where the national system operator is subject to an energy administration order granted under the Energy Act 2004; energy administration orders may be made by the court under a special regime to ensure that energy network companies provide secure energy supplies in insolvency situations;

- where there has been a change of control of the national system operator and the Secretary of State considers it necessary or desirable to transfer the functions as a result of that change;
- where the Secretary of State considers that the EMR delivery functions are not being performed efficiently and effectively;
- if the Secretary of State considers it necessary or expedient in order to further the purposes for which CFD or capacity market regulations are made; for example, if he or she considers that it is necessary to change delivery body in order to encourage low carbon electricity generation, or in order to meet the demands of consumers for the supply of electricity in Great Britain.

245. *Subsection (3)* defines the circumstances in which the national system operator poor performance trigger could be used. The Secretary of State is required to notify the national system operator of his or her opinion that it is failing to perform its functions in an efficient and effective manner. If, after six months, the Secretary of State considers that the failure has not been rectified, the functions may be transferred.

246. *Subsection (4)* explains the definition of control to be used in relation to the change of control trigger in *subsection (2)*.

247. *Subsection (5)* requires that the national system operator be consulted if the Secretary of State transfers the functions because he or she considers it necessary or expedient in order to further the purposes for which CFD or capacity market regulations are made. *Subsection (6)* allows the Secretary of State to avoid consulting where the urgency of the case would make it inexpedient to do so.

248. *Subsection (7)* allows the Secretary of State to make further transfers of the EMR delivery functions, including a transfer of the EMR delivery functions back to the national system operator.

249. *Subsections (9)* and *(10)* require the consent of the alternative delivery body when this is someone other than the Secretary of State. This includes any re-conferral of the functions on the national system operator.

Section 47: Orders under section 46: fees and other supplementary provision

250. *Subsections (1)* and *(2)* of this section allow the transfer of functions order to provide the alternative delivery body with the power to require fees to be paid in relation to any EMR functions it carries out. It also makes provision about the scope of the power under section 46 (*subsections (3)* to *(5)*), the parliamentary procedure for orders (*subsections (6)* and *(7)*) and requires the Secretary of State to consider whether licence modification powers should be used, for example to remove any obligations intended to manage conflicts of interest of the national system operator (*subsections (9)* and *(10)*).

251. *Subsection (8)* introduces Schedule 3, which confers a power on the Secretary of State to transfer property, rights and liabilities, by transfer scheme, when he or she exercises his or her power to transfer EMR delivery functions under section 46. Transfer schemes are used to enable the transfer of functions to operate efficiently and effectively.

252. *Paragraph 1* of Schedule 3 sets out the power to make one or more transfer schemes. The transfer schemes would list the property, rights and liabilities being transferred, and state the date on which the transfer is to take place. Transfer schemes are not subject to any parliamentary procedure. *Paragraph 2* sets out the full scope of the transfer power. *Paragraph 3* requires the Secretary of State to include provision for payments of compensation to those whose interests are adversely affected by a transfer.

Section 48: Energy administration orders

253. This section amends the Energy Act 2004 to extend the special administration regime for the national system operator to include its EMR functions.

254. Special administration regimes act as an alternative to general insolvency law and procedures. They are designed to ensure uninterrupted and safe operation of essential services in the event of a company becoming insolvent. Special administration regimes exist for electricity transmission (including system operation) and distribution, gas transportation licensees, water and rail companies and parts of the banking sector.

255. Under the special administration regime introduced by the Energy Act 2004, the Secretary of State (or the Authority with the Secretary of State's consent) can apply to the court for an energy administration order, which may be granted where the company meets the statutory tests for insolvency. In these circumstances, the court would appoint an energy administrator, whose statutory objective would be to ensure "that the company's system is and continues to be maintained and developed as an efficient and economic system". The energy administrator is required to do this by (if possible) managing the company as a going concern.

256. This section amends the special administration regime to provide that where EMR delivery functions have been conferred on the system operator then the administrator has an additional objective of ensuring that the EMR functions are performed in an efficient and effective manner. In a situation where the old and new objectives could not be secured in a consistent way, the new objective would be subordinate to the primary objective of maintaining and developing an efficient and economic system.

Chapter 6: Access to markets etc

Section 49: Power to modify licence conditions etc: market participation and liquidity

257. This section enables the Secretary of State to modify electricity generation and supply licences and to amend electricity industry codes to facilitate participation and promote liquidity in the wholesale electricity market.

258. *Subsection (1)* allows the Secretary of State to modify the conditions of particular electricity generation and supply licences and the standard conditions contained in such licences and to amend electricity industry codes (such as the Balancing and Settlement Code), which are documents maintained in accordance with the conditions of such licences, and agreements that give effect to industry codes.

259. *Subsection (2)* sets out the purposes for which the Secretary of State may use the modification power, these being to:

- facilitate participation in the wholesale electricity market in Great Britain, both by licence holders and others (such as exempt suppliers and generators); and
- promote liquidity in that market.

260. *Subsection (3)* sets out a non-exhaustive list of the types of licence modification that the Secretary of State may choose to make when exercising the powers in *subsection (1)*. These include:

- imposing obligations on electricity generators or suppliers to either sell or purchase electricity, including obligations to sell or purchase electricity on certain terms or in particular circumstances (such as a requirement to sell a proportion of electricity on a particular exchange or to sell particular products at particular times);
- restrictions on generators and suppliers selling or purchasing electricity to or from their group undertakings; and

- imposing obligations to disclose or publish information (such as information about transactions in the wholesale electricity market).

261. *Subsection (4)* provides additional clarification on the types of transactions that may be subject to the restrictions referred to in *subsection (3)(b)*.

Section 50: Power to modify licence conditions etc to facilitate investment in electricity generation

262. This section enables the Secretary of State to modify the conditions of electricity supply licences and related industry codes for the purpose of facilitating investment in electricity generation by means of a Power Purchase Agreement (PPA) scheme.

263. *Subsection (1)* allows the Secretary of State to modify the conditions of particular supply licences and the standard conditions incorporated in such licences and also to amend electricity industry codes, being documents maintained in accordance with the conditions of such supply licences, and agreements that give effect to industry codes.

264. *Subsection (2)* sets out the purpose for which the Secretary of State may use the modification power. This is limited to facilitating investment in electricity generation by means of a power purchase agreement scheme.

265. *Subsection (3)* explains that

- a PPA scheme is a scheme established by supply licence conditions and regulations for promoting the availability to electricity generators of power purchase agreements;
- a PPA is an arrangement under which a licensed supplier agrees to purchase electricity generated by an electricity generator at a discount to a prevailing market price.

266. *Subsection (4)* sets out the nature of provisions that may be made in licence or code modifications under this section, which include:

- the eligibility of an electricity generator to enter into a PPA under the scheme;
- the terms of any PPA to be entered into under the scheme, including provision for determining the price at which electricity is to be purchased under the agreement and the duration of any such agreement;
- the circumstances in which a licensed supplier is or may be required or permitted to enter, or offer to enter, into a PPA under the scheme;
- the provision of information in connection with the scheme.

267. *Subsections (5)* and *(6)* set out further details about the process for determining which licensed supplier or suppliers is or are required or permitted to enter, or offer to enter, into a PPA agreement with an electricity generator in any particular case and for this determination to be made by one or more of the Secretary of State, the Authority, and the electricity generator or by auction or other competitive process.

268. *Subsection (7)* sets out that a licenced supplier under section 50 and 51 means the holder of a licence under Section 6(1)(d) of the Electricity Act 1989.

Section 51: Power purchase agreement scheme: regulations

269. This section enables the Secretary of State to make regulations in connection with any modifications made under section 50 for or in connection with a PPA scheme.

270. *Subsection (2)* sets out that such regulations may include provision for:

- apportioning amongst licensed suppliers the costs or benefits of any licensed supplier in connection with the scheme;
- conferring functions on the Secretary of State or the Authority;
- the delegation of functions conferred on the Secretary of State or the Authority by the regulations or by virtue of section 50;
- obligations imposed by the regulations on licensed suppliers to be enforceable as if they were relevant requirements on a regulated person under section 25 of the Electricity Act 1989;
- requiring the provision of information in connection with the scheme.

271. *Subsection (3)* explains that provision may be included in regulations for requiring licensed suppliers to pay a levy to the Authority or conferring an entitlement on them to receive a payment from it.

272. *Subsection (4)* sets out that regulations may include provision for the Secretary of State or the Authority to determine what is to be taken into account as a cost or benefit of any licensed supplier in connection with the scheme.

273. *Subsection (5)* enables the Secretary of State to make different provisions in regulations for different cases or circumstances. It also enables the Secretary of State to include in regulations provisions of an incidental, supplementary, consequential or transitional nature.

274. *Subsections (6)* and *(7)* require that the Secretary of State must consult relevant persons, including licensed suppliers and the Authority, before making any regulations in connection with any modifications made under section*50* and confirms that this requirement can be satisfied by consultation before the passing of the Act.

275. *Subsections (8)* and *(9)* provide that regulations must be made by statutory instrument and are subject to the negative parliamentary procedure.

Section 52: Power Purchase agreement scheme: disclosure of information

276. This section extends section 105 of the Utilities Act 2000 to include sections 50 and 51 of the Energy Act 2013 in relation to general restrictions on disclosure of information, by inserting references to these sections into *subsections (1)(a)* and *(3)(a)* of the Act.

Section 53: Principal objective and general duties: power purchase agreement scheme

277. This section requires the Secretary of State and the Authority to apply the principal objective and comply with the general duties laid out under sections 3A to 3D of the Electricity Act 1989, when exercising functions so far as they relate to a power purchase agreement scheme.

Section 54: Licence modifications under sections 49 and 50: further provisions

278. This section sets out additional provisions that apply to both sections 49 and 50 and clarifies how these licence modification powers may be exercised.

279. *Subsection (1)* allows the Secretary of State to provide for a new document to be required to be prepared and maintained in accordance with the conditions of a licence. This would enable the Secretary of State to create a new industry code, for example to set out the detailed arrangements of an auction in which suppliers or generators are obliged, by the conditions of their licences, to participate.

280. *Subsection (2)* requires the Secretary of State to consult affected licensees, the Authority, and other relevant persons, before making modifications under section 49 or 50.

281. See also section 64, which sets out other general provision on licence and code modification powers.

Chapter 7: The renewables obligation: transitional arrangements.

Section 55: Closure of support under the renewables obligation

282. *Subsection (1)* inserts new sections 32LA and 32LB to the Electricity Act 1989 to confer a power on the Secretary of State to make a renewables obligation closure order. The closure order will prevent renewables obligation certificates from being issued under any renewables obligation order (whether made by the Secretary of State or by the Scottish Ministers) in respect of electricity generated after a specified date (section 32LA(2)). Different closure dates may be specified for different cases or circumstances (section 32LA(3)). The powers in sections 32 to 32M of the Electricity Act 1989 (renewables obligation) will be subject to any provisions contained in a closure order (section 32LA(7)). The closure order may make provision as to the functions of the Authority in relation to the closure of the renewables obligation and may make transitional provision and savings (section 32LA(8)). *Subsections (2)* and *(3)* make consequential amendments to sections 32M (interpretation) and section 106 (regulations and orders) of the Electricity Act 1989. Subsection (4) provides the Department for Enterprise, Trade and Investment in Northern Ireland with the power to amend corresponding legislation in relation to the Northern Ireland renewables obligation to take account of the amendments made by *subsection (1)*.

Section 56: Transition to certificate purchase scheme

283. The section inserts new sections 32N to 32Z2 to the Electricity Act 1989 to enable the Secretary of State to make an order which imposes an obligation on the Authority, the Secretary of State or a CFD counterparty to purchase GB certificates which have been issued to generators in respect of renewable electricity (section 32N). The body on which this certificate purchase obligation is placed is referred to in the sections as the purchasing body of GB certificates (section 32N(2)(a)).

284. With the consent of the Northern Ireland Department for Enterprise, Trade and Investment (DETI), the Secretary of State may also make an order which imposes an obligation on the Northern Ireland Authority for Utility Regulation (the Northern Ireland authority) or a CFD counterparty to purchase NI certificates which have been issued to generators in Northern Ireland in respect of renewable electricity. The body on which this certificate purchase obligation is placed is referred to in the sections as the purchasing body of NI certificates (section 32N(2)(b)).

285. The GB and NI certificates are intended to be issued in place of renewables obligation certificates and to be issued in similar circumstances. The price at which the certificates are to be purchased by the purchasing body will be fixed and different purchase prices may be set for different periods of time (section 32O(2)(a) and (b)). Adjustments to the purchase price may also be made for inflation (section 32O(2)(c)).

286. The order may provide for the manner in which a GB or NI certificate is to be presented for payment and may set deadlines and other conditions that must be met before the purchasing body is required to purchase the certificate (section 32O(2)(e) and (h)). The person presenting the certificate for payment may also be required to provide information in a particular form and within deadlines set by the purchasing body (section 32O(4)). The order may authorise certain fees or charges incurred in making the payment for the certificates to be deducted from the payment for the certificate (section 32O(2)(l)).

287. The new section 32P makes provision for an order to impose a levy charged in respect of supplies of electricity. In Great Britain, the levy would be administered by the Authority, by the Secretary of State or by a CFD counterparty body (section 32P(7)). In Northern Ireland, the levy would be administered by the Northern Ireland authority, DETI or a CFD counterparty body (section 32P(8)).

288. The new section 32Q sets out how the amounts raised by the levy are to be used to meet the cost of purchasing certificates (section 32Q(3)) or paid into the Consolidated Fund or the Consolidated Fund of Northern Ireland in respect of costs incurred by the administrator of the levy, the purchasing body, the Authority and the Northern Ireland authority. The Secretary of State may also direct sums held by the purchasing body to be paid into the relevant Consolidated Fund (section 32Q(9) and (10)).

289. The order may provide for different levy rates for different periods or different cases or circumstances (section 32P(3)) and may make exemptions from the levy (section 32P(4)). The order may impose deadlines for payment of the levy, with interest for late payment (section 32P(6)(e)) and may provide for enforcement measures if the requirements in respect of the levy are not complied with (section 32P(6)(i)).

290. In the case of overpayment or underpayment of the levy, the order may require the amount to be set off against or added to the liability of the person to pay the levy for future periods (section 32P(11)). The order may provide for further payments to be made by electricity suppliers if there is a shortfall in the amounts raised by the levy due to missed or late payments or insolvency (section 32P(12))

291. The CFD counterparty can be designated as the purchasing body or as the administrator of the levy only with the consent of the CFD counterparty (section 32R(2)). The Secretary of State may make an order revoking the designation at any time and the CFD counterparty may withdraw its consent by giving 3 months notice (section 32R(4)). The Secretary of State may also make an order dealing with the transition upon a change in the identity of the purchasing body or administrator when the designation of the CFD counterparty as the purchasing body or administrator ceases to have effect (section 32R(5) and (6)).

292. A certificate purchase order may provide for the Authority to issue a GB certificate to the operator of a generating station or to such other person specified in the order (section 32S(1)). A GB certificate must certify that it has been issued in respect of electricity generated from renewable sources, by the generating station or stations specified in the certificate, and supplied to customers in the United Kingdom or used in a permitted way (as defined in section 32S(10)). A GB certificate cannot be issued if a renewables obligation order is in force and a renewables obligation certificate could be issued for the electricity (section 32S(3)).

293. A certificate purchase order may provide for the Northern Ireland Authority to issue a NI certificate to the operator of a generating station in Northern Ireland (section 32T(1)). A NI certificate must certify the same matters as a renewables obligation certificate issued under article 52 of the Energy (Northern Ireland) Order 2003 (see article 54 of that order). A NI certificate cannot be issued if a Northern Ireland renewables obligation order is in force and a Northern Ireland renewables obligation certificate could be issued for the same electricity (section 32T(3)).

294. Article 54(10) of the Energy (Northern Ireland) Order 2003 prevents the issue of a Northern Ireland renewables obligation certificate in respect of electricity generated by a generating station situated in the territorial sea. A similar restriction applies to the issue of NI certificates by the Northern Ireland authority, as for the purposes of section 32N to 32Z2, Northern Ireland does not include any part of the territorial sea adjacent to Northern Ireland, unless a certificate purchase order provides otherwise (section 32Z2(5) and (6)).

295. The new sections 32U to 32X and 32Z to 32Z2 mirror many of the provisions in sections 32C to 32E and 32J to 32M of the Electricity Act 1989 to enable equivalent provision to be made under the certificate purchase scheme as may currently be made under the renewables obligation. In particular, this will enable many of the same rules to apply in connection with the issue of GB and NI certificates as currently apply, or as may in the future apply, to the issue of renewables obligation certificates. In some cases, the powers for the certificate purchase scheme differ from the existing powers for the renewables obligation to reflect the different features of the certificate purchase scheme.

296. Section 32U makes supplemental provision relating to the issue of GB or NI certificates. A certificate purchase order may specify cases or circumstances in which certificates cannot be issued or can be issued in respect of a proportion only of the electricity generated (s32U(1)). Only the proportion attributable to renewable sources is to be treated as generated from such sources where the generating station is fuelled partly by renewables sources and partly by fossil fuel (section 32U(4)). A certificate purchase order can specify how that proportion is to be determined and the consequences where more than the specified proportion of fossil fuel is used (section 32U(5)).

297. A certificate purchase order may impose restrictions on the transfer of GB and NI certificates (section 32U(7)). The order can specify circumstances where the Authority or Northern Ireland authority may revoke certificates (section 32U(8)). The order may provide for sums to be repaid to the Authority or the Northern Ireland authority if the purchasing body has purchased a GB or NI certificate that should not have been issued, and if it is not possible to refuse the issue of another certificate in its place (section 32U(10)) and provide for enforcement and appeals where repayment is required (section 32U(11)).

298. A certificate purchase order may provide for different numbers of certificates to be issued for electricity generated from different renewable sources or in other different cases or circumstances (section 32V). This is known as "banding provision". Before making a banding provision, the Secretary of State must have regard to the matters listed in section 32V(4).

299. A certificate purchase order may provide for banding provision made in a renewables obligation order to apply in relation to GB and NI certificates as it applied in relation to renewables obligation certificates (section 32W(3)). The requirement to hold a banding review and the requirement to have regard to the matters listed in section 32V(4) does not apply where the effect of earlier banding provisions is being preserved (section 32W(4)).

300. A certificate purchase order may provide for the number of certificates issued in respect of the generation of electricity by a generating station to be conditional upon the repayment or cancellation of the whole or part of a statutory grant (section 32W(5) to (9)). In the case of repayment of a grant, the repayment must be made to the person who made the grant (section 32W(7)(a)). The order may also require interest to be paid, and may leave the interest rate and period to be determined by a person, such as the person who made the grant (section 32W(7)(b)).

301. A certificate purchase order may provide for the Authority and the Northern Ireland authority to require information which is relevant to whether a GB or NI certificate should be issued (section 32X(1)). The order may also require information to be provided about biomass used to generate electricity (section 32X(3)).

302. Section 32Y places a duty on the Secretary of State, when exercising a number of powers listed for the certificate purchase order, to exercise those powers in the way that the Secretary of State considers will replicate the effect of a provision made by virtue of an equivalent power for the renewables obligation order in England and Wales or in Scotland. The powers to which this duty applies are listed in section 32Y(4) together with the equivalent power for the renewables obligation order.

303. Where a listed power is exercised in relation to Northern Ireland, the power is to be exercised in the way that the Secretary of State considers will replicate the effect of a provision made by virtue of an equivalent power for the Northern Ireland renewables obligation (section 32Y(2)(b)).

304. The duty in section 32Y applies only to the extent that it appears reasonably practicable to exercise the listed power in that way and only to the extent that the duty is not inconsistent with other duties on the Secretary of State (section 32Y(3)).

305. A certificate purchase order may provide for renewables obligation certificates to be treated as if they were GB or NI certificates (section 32Z(2)) and may make different provision for different parts of the United Kingdom or for different localities (section 32Z(3)).

306. The Authority may act on behalf of the Northern Ireland Authority by arrangement (section 32Z(5)). Similar arrangements have been made in respect of the renewables obligation by virtue of section 121 of the Energy Act 2004.

307. Section 32Z2 provides definitions for various terms used in the sections 32N to 32Z2.

Chapter 8: Emissions performance standard

Section 57: Duty not to exceed annual carbon dioxide emissions limit

308. This section places a limit on the amount of carbon dioxide that a "fossil fuel plant" may emit within a year. Those operating a "fossil fuel plant" are placed under a duty not to exceed the emissions limit. The limit is calculated using the formula in *subsection (1)* by reference to an individual plant's installed generating capacity (of the electricity generating station), a statutory rate of emissions and a load factor of 85%, (expressed in the formula as 7.446, see further below for an explanation for how this is derived).

309. To calculate the limit, a plant's capacity in Mega Watts (MW) is multiplied by the statutory rate of emissions expressed in g/kWh (grams per kilo watt hour) and 7.446. The figure of 7.446 represents 85% of the total operating hours available in a year (8760) divided by 1000, which provides that the annual limit is expressed in tonnes of carbon dioxide.

310. By virtue of *subsection (2)* the statutory limit is set at 450g/kWh until the start of 2045. This "grandfathering" of the emissions limit under which a new plant is consented provides regulatory certainty for investors about the regime under which their assets will operate, consistent with the time needed to achieve a return on an investment in a new plant.

311. The emissions limit duty is applicable to a "fossil fuel plant" that is built pursuant to a "relevant consent" provided on or after the date that *subsection (1)* comes into force. *Subsection (3)* defines a "fossil fuel plant" whilst "relevant consent" is defined in section *61(1)* as one which is granted under the Planning Act 2008, section 36 of the Electricity Act 1989 or Article 39 of the Electricity (Northern Ireland) Order 1992. This means that the emissions limit duty will only apply to plant at or over 50MW electrical capacity that are given development consent by the Secretary of State (in England and Wales), Scottish Ministers (in Scotland) or the Department of Enterprise, Trade and Investment (in Northern Ireland).

312. "Fossil fuel plant" is defined in *subsections (3)* and *(4)*. *Subsection (3)* makes clear that a fossil fuel plant includes any associated gasification plant or Carbon Capture and Storage plant and which satisfies the conditions in *subsection (4)*. The conditions in *subsection (4)* are that the plant is constructed pursuant to a "relevant consent", see previous paragraph, and uses fossil fuels or fuel produced by gasification plant.

313. *Subsection (5)* subjects the emissions limit duty in *subsection (1)* to any regulations which the Secretary of State makes under *subsection (6)*. Under *subsection (6)* the

Secretary of State may make regulations regarding interpretation of the emissions limit duty (under *subsection (1)*) and for extending the application of the emissions limit duty or modifying it in respect of the types of case mentioned in Schedule 4.

314. *Paragraph 1* of Schedule 4 allows the Secretary of State, when making regulations under section 57(6)(b), to bring existing fossil fuel plant consented prior to this legislation into the regime where that plant replaces a main boiler or installs an additional main boiler. This sort of provision may be necessary in order to prevent existing fossil fuel plants from being refurbished with replacement boilers, effectively extending a plant's technical lifetime consistent with that of a new plant, thereby circumventing the emissions limit duty.

315. *Paragraph 2* of Schedule 4 allows the Secretary of State to modify the emissions limit duty such that it does not apply to facilities that generate electricity solely for the purposes of self-supply. *Paragraph 3* allows the Secretary of State to apply the emissions limit with modifications where gasification or CCS plant is "associated" with more than one generating station at a fossil fuel plant. *Paragraph 4* allows the Secretary of State to provide different limits to generation plant which enters, or ends, commercial operation part way through a calendar year.

316. *Subsection* (7) illustrates the type of further provision which the Secretary of State may make in regulations under *subsection* (6)(a). *Subsection* (7)(a) taken together with Schedule 5 *Paragraph 3* allows the Secretary of State to make provision in respect of "associated gasification plant[1]" for the purpose of ensuring that the emissions limit regime can be suitably applied in circumstances where a generating station uses fuel produced by a gasification plant that is either integral to, or remote from, the generating station, as well as where the gasification plant provides fuel to more than one generating station.

317. *Subsection (7)(c)(ii)* makes provision for application of the emissions limit duty in respect of electricity generating stations that only make incidental use of fossil fuel for safety, start-up or stabilisation purposes (such as biomass plants).

318. Regulations under *subsection (7)* can also include provisions to determine the emissions from fossil fuel plant, to include or exclude emissions by reference to regulations implementing the EU Emissions Trading System (*subsection (7)(g)*); and to exclude emissions associated with the supply of heat to customers from combined heat and power plants (*subsection (8)*).

Section 58: Introduction of carbon capture and storage: exemption from emissions limit

319. This section provides that a fossil-fuel plant that is equipped with carbon capture and storage (CCS) will be exempt from the emissions limit duty for a period of 3 years starting from the date when a complete CCS system (capture, transport and storage) is ready for use. The exemption is time-limited and available until the end of 2027.

320. *Paragraph 4* of Schedule 4 allows the Secretary of State, when making regulations under section 57(6)(b) to be apply the exemption with modifications such that it can be applied to only those parts of a fossil fuel plant that are fitted with a complete CCS system.

Section 59: Suspension etc of emissions limit in exceptional circumstances

321. *Subsection (2)* provides the Secretary of State with a power to suspend or modify the emissions limit duty on fossil fuel plant located in Great Britain (GB). *Subsection (1)* sets out the circumstances in which the power to suspend or modify the emissions limit duty will arise. It will arise, for example, if the Secretary of State believes there is a

---

1 gasification plant can extract combustible gases e.g. hydrogen, from fossil fuels, which when burnt do not produce CO_2.

risk of a shortfall in electricity supplies and that suspending the emissions limit duty will prevent or reduce a shortfall.

322. *Subsection (3)* defines "electricity shortfall" so that shortfalls in GB and Northern Ireland (NI) can be taken into account to determine whether the power should be exercised. Thus, the Secretary of State may exercise this power where there is a risk to security of electricity supplies in GB or NI. The provisions also enable the Department of Enterprise Trade and Investment (DETI) in Northern Ireland to suspend or modify the emissions limit in respect of fossil fuel plant located in NI (see definition of "appropriate authority" and "relevant plant" in *subsection (12)).*

323. *Subsection (2)* provides for the Secretary of State to direct that the emissions limit duty in respect of a plant in GB be suspended or modified for such period as is specified in that direction. *Subsection (5)* requires the Secretary of State to consult Scottish and Welsh Ministers before giving a direction under subsection (2).

324. A suspension or modification of the emissions limit duty will be effected by way of a direction to the relevant enforcing authorities who will be appointed pursuant to powers in section *60* and Schedule 5.

325. *Subsection (6)* requires the Secretary of State to lay before Parliament a copy of any direction together with a statement of the reasons for making the direction as soon as is practicable after giving a direction. A similar requirement applies to DETI, which is responsible for suspending or modifying the emissions limit in Northern Ireland, see *subsection (8)*).

326. *Subsection (9)* provides that a direction must be made in writing and that a direction may be varied or revoked by a further direction.

327. *Subsection (11)* requires the Secretary of State and DETI to issue, and have regard to, a statement of his or her policy in relation to making directions to suspend or modify the emissions limit duty.

Section 60: Monitoring and enforcement

328. *Subsection (1)* places a duty on the "appropriate national authority" to make arrangements for monitoring compliance with, and enforcement of, the emissions limit duty. The "appropriate national authority" is the Secretary of State in England, Scottish Minsters in Scotland, Welsh Minsters in Wales and the Department of the Environment in Northern Ireland (DoE) (see *subsection (4)*).

329. *Subsection (2)* enables the "appropriate national authority" to make regulations for the purpose of implementing the arrangements which are necessary for the purpose of monitoring and enforcing the emissions limit duty.

330. *Subsection (3)* requires that arrangements must also be made in the enforcement regulations for an enforcing authority to comply with a direction made under section 59 to suspend or modify the emissions limit duty.

331. Schedule 5 details the measures that may be included in the regulations made under section 60 about monitoring and enforcement of compliance with the emissions limit. These include the relevant national authority determining which body will be the enforcing authority, expected to be the Environment Agency in England, the Scottish Environmental Protection Agency, the Northern Ireland Environment Agency and the new Natural Resources Body for Wales.

332. *Paragraph 1* of Schedule 5 details the matters that can be dealt with in the enforcement regulations. Among other things, they make provision for publication of information on compliance with the emissions limit; authorise the national authority to set up a charging regime; provide for enforcement of the duty through enforcement notices; and confer a right of appeal against decisions made by the enforcing body.

333. Away from enabling the enforcement regulations to contain provision which will facilitate an enforcing authority to perform its enforcement activities in *paragraph 1*, *paragraph 2* describes the provision that can be made in relation to enforcement notices and the possible effect that enforcement notices can have. *Paragraph 3* enables provision to be included dealing with the imposition of financial penalties in cases of a breach. *Paragraph 4* provides that the enforcement regulations may contain consequential amendments to other legislation when such amendments are necessary to implement an emissions limit duty enforcement regime.

Section 61: Interpretation of Chapter 8

334. This section defines terms used in this Chapter. For example, the section defines "fossil fuel" as coal, lignite, peat, natural gas, crude liquid petroleum, bitumen or any substance which is produced directly or indirectly from these products for use as fuel and, when burnt, produces carbon dioxide.

Section 62: Regulations under Chapter 8

335. *Subsection (1)* provides that any orders or regulations made under this Chapter must be made by statutory instrument. *Subsection (2)* makes a similar provision in respect of regulations made by DETI and requires these regulations to be made by way of statutory rule.

336. *Subsection (3)* applies the affirmative resolution procedure to any regulations made under section 57. *Subsection (4)* subjects any enforcement regulations to the negative resolution procedure. Therefore, regulations containing provision for monitoring and enforcement are subject to the negative procedure. Where any regulations seek to make consequential amendments to primary legislation the regulations are subject to the affirmative resolution procedure. Equivalent procedures apply in respect of regulations or statutory rules made by the devolved administrations, see *subsections (6), (7)* and *(8)*.

337. *Subsection (10)* respects the Northern Ireland devolution settlement and the fact that the policy in this Chapter relates to a matter within the legislative competence of the Assembly in Northern Ireland. Accordingly, the Secretary of State must obtain the consent of DETI before making provision under section 57 which will apply in Northern Ireland.

338. *Subsection (11)* requires the Secretary of State to consult Scottish and Welsh Ministers and such persons as Secretary of State thinks appropriate before making regulations under section 57(6) (interpretation of duty or applying duty with modifications to additional cases) or section 60(2) (monitoring and enforcement). *Subsection (12)* requires Scottish Ministers and Welsh Minsters to consult such persons as they think appropriate before making regulations under section 60 (monitoring and enforcement).

Chapter 9: Miscellaneous

Section 63: Exemption from liability in damages

339. This section gives the Secretary of State the power to make provision in contracts for difference (CFD) regulations (see section 6), capacity market regulations (see section 27) or regulations relating to investment contracts (see *paragraph 6* of Schedule 2) to limit the national system operator's liability to pay damages if a civil claim was brought against it in respect of its role, or a particular element of its role, as the delivery body for the CFD and capacity market schemes and in relation to investment contracts. A limit on liability in damages could extend to the acts or omissions of the national system operator, its directors, employees, officers or agents.

340. This section does not allow the Secretary of State to limit liability in cases where an act or omission is in bad faith, where the act or omission would be unlawful under section 6 of the Human Rights Act 1998, or where the national system operator has breached an

order for securing compliance issued by the Authority under the enforcement powers in the Electricity Act 1989.

341. *Subsection (4)* places a reporting duty on the Secretary of State. If the Secretary of State confers a CFD, capacity market or investment contracts delivery function on the national system operator and does not limit the national system operator's liability in damages in respect of that function, the Secretary of State must publish a statement setting out the reasons why.

Section 64: Licence modifications: general

342. This section provides more detail about the licence and industry code modification powers in sections 26 (contracts for difference), 37 (capacity market), 45 (conflicts of interest), 49 and 50 (access to markets etc) and *paragraph 19* of Schedule 2 (investment contracts). It describes the parliamentary scrutiny procedure, the full scope of the powers, duties to publish modifications and other technical requirements.

343. *Subsections (2)* to *(7)* set out the parliamentary scrutiny procedure, which is a variation of the "draft negative" procedure used for some statutory instruments. *Subsections (2)* and *(3)* provide that before making modifications, the Secretary of State must lay a draft before Parliament for a period of 40 days, during which either House of Parliament may reject the draft modifications. If the modifications are not rejected during the 40-day period the Secretary of State can bring them into effect (*subsection (4)*). *Subsections (6)* and *(7)* explain how the 40-day period is calculated.

344. *Subsections (8)* and *(9)* set out the full scope of the licence modification powers:

- *subsection (8)* allows the Secretary of State to use the licence modification powers to make modifications which are general (i.e. applicable to all licence holders) or specific (for example, to make different provision for small suppliers or generators). It also allows the Secretary of State to make different modifications of different licences and to make incidental, supplemental, consequential or transitional modifications;

- *subsection (9)* enables provisions included in a licence or industry code by a modification made under these powers to make different provision for different cases (i.e. it allows a licence to be modified in a way that requires or allows the licence holder to deal with other people in different ways). It also makes it clear that any provisions imposed by such a modification need not relate to the activities (e.g. generation, supply) that the licence authorises. *Subsection (9)(c)* enables a licence condition which is imposed under these powers to confer certain functions on the Secretary of State or the Authority, to the same extent as section 7(2A), (3) or (4) of the Electricity Act 1989. For example, this could require a licence holder to comply with a direction given by the Authority or the Secretary of State.

345. *Subsection (10)* requires the Secretary of State to publish the details of any modifications as soon as reasonably practicable after he or she brings them into effect.

346. *Subsections (11)* and *(12)* make provision about the relationship between licence modifications made under the power and standard conditions:

- *subsection (11)* requires the Authority to incorporate modifications to standard conditions of licences in future licences and to publish the modifications. The standard conditions of electricity licences are governed by section 33 of the Utilities Act 2000 (in relation to generation, distribution and supply licences), section 137(3) of the Energy Act 2004 (electricity transmission licences) and section 146 of the Energy Act 2004 (electricity interconnector licences). Section 8A of the Electricity Act 1989 provides that the conditions which, by virtue of those enactments, are standard conditions for a particular type of licence are incorporated by reference in all licences of a particular type;

- *subsection (12)* states that a modification to a part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for these purposes.

347. *Subsection (13)* explains that a power to modify a licence or code is a continuing power, like a power to make statutory instruments. Modifications made at a later date could amend, add to or remove earlier modifications, or make completely new modifications.

Section 65: Consequential amendments

348. This section makes minor amendments to other legislation to ensure the coherence of electricity law. *Subsection (1)* has the effect of requiring the Secretary of State and the Authority, whenever they apply the "principal objective" under section 3A of the Electricity Act 1989 (the principal objective is to protect the interests of present and future consumers), to have regard to the need to secure that licensees are able to finance their obligations under the Energy Act 2013.

349. *Subsections (2)* to *(4)* add the Energy Act 2013 to three lists of legislation; where an Act is on the list, licence modification powers contained in the Act can be used modify the standard conditions of electricity licences.

Section 66: Review of certain provisions of Part 2

350. This section requires the Secretary of State to carry out a review of much of Part 2, as soon as is reasonably practicable five years after Royal Assent, and report the conclusions to Parliament. In the report, the Secretary of State must set out the objectives of the provisions which are under review, the extent to which the objectives have been achieved, whether the objectives are still appropriate and, if they are, whether there might be other ways of achieving them which impose less regulation.

Part 3: Nuclear Regulation

Chapter 1: The ONR's purposes

Section 67: The ONR's purposes

351. This sets out each of the ONR's purposes, which the rest of the Chapter goes on to define. The ONR's purposes recognise the different areas of ONR's responsibility and, although each of the purposes cover broadly different areas of nuclear regulation, there are areas in which they are applicable to the same circumstances. For example, provision relating to access to parts of a nuclear site may be made from the perspective of nuclear security or safety.

352. There are five sets of purposes: those relating to nuclear safety, to nuclear site health and safety, to nuclear security, to nuclear safeguards and to the transport of radioactive materials. Section 78 (which sets out the ONR's principal function) puts the ONR under an obligation to do whatever it considers appropriate for ONR's purposes including assisting and encouraging others to further those purposes.

353. Some of these purposes cover areas that are currently covered by the purposes of the Health and Safety Executive, set out in section 1 of the Health and Safety at Work etc. Act 1974. Where the Health and Safety Executive currently has functions and powers in relation to those areas covered by the ONR's purposes it will cease to do so once these provisions come into force. The exception is in relation to the ONR's nuclear site health and safety purposes where both the ONR and the Health and Safety Executive will have powers; however on nuclear sites ONR will be the regulator for this Act and the Health and Safety at Work etc. Act 1974.

Section 68: Nuclear safety purposes

354. This section defines the ONR's nuclear safety purposes. These relate to protecting persons against the risks of harm from ionising radiation arising from, or in connection with, "GB nuclear sites". Risks of harm from ionising radiation that may arise from the design and construction, operation and decommissioning of relevant nuclear installations, or from the storage of nuclear matter used or stored on GB nuclear sites, are also within the scope of this purpose (see *subsections (1)(a)* to *(c)*), as well as the arrangements to minimise those risks in the event of an escape or release of such ionising radiation (see *subsection (1)(d)*). This section brings the specific hazards posed by nuclear installations and nuclear sites within the ONR's remit.

355. "Relevant nuclear installation" is defined in *subsection (3)*. The term includes former, current or proposed "nuclear installations" within the meaning of section 26 of the Nuclear Installations Act 1965, located (or to be located) anywhere in Great Britain and which required, require, or would require (as the case may be), the operator to hold a site licence under section 1 of that Act. These installations include nuclear reactors, enrichment facilities and installations that are designed or adapted to store nuclear fuel. Reactors that are part of a means of transport (such as a nuclear submarine) are not included within this definition. Only installations on "GB nuclear sites" are within the scope of this purpose. Such sites are nuclear sites (within the meaning of section 112) in England, Wales or Scotland.

Section 69: Nuclear site health and safety purposes

356. This section defines the ONR's non-nuclear or "conventional" health and safety purposes. This makes clear that one of the purposes of the ONR is securing the protection of persons at work on licensed nuclear sites in Great Britain, as well as the prevention of risks to the health and safety of other persons which arise from the activities carried out on these. This ensures that all work related hazards on licensed nuclear sites are within the ONR's remit.

357. Although this is one of the ONR's purposes, the predominant regulator of conventional health and safety in Great Britain will continue to be the Health and Safety Executive. This is reflected in the relationship between the ONR and the Health and Safety Executive and regulations governing conventional health and safety on nuclear sites will be made under section 15 of the Health and Safety at Work etc. Act 1974 and not under section 74 of this Act.

Section 70: Nuclear security purposes

358. This section sets out the ONR's nuclear security purposes. Key areas which these purposes cover include ensuring the security of nuclear premises and of nuclear materials and certain software or equipment stored or used at such premises (see *subsections (1)(a)* and *(b)*). These purposes apply to civil nuclear premises only, so do not relate to premises which are controlled or operated wholly or mainly for the purposes of the department of the Secretary of State for Defence or to transports of nuclear material for the purposes of that department.

359. Civil nuclear premises are civil nuclear sites or premises where nuclear material is used or stored (see the definition of "civil nuclear premises" in *subsection (3)*). "Nuclear material" is defined in *subsection (3)* of this section as any fissile material in the form of a uranium or plutonium metal, alloy or compound. However, this definition of "nuclear material" can be added to by regulations made by the Secretary of State under the definition of nuclear material in *subsection (3)*. Therefore, the security purposes of the ONR in this respect are not fixed but can be expanded to cover other materials that need protection from a security perspective.

360. The nuclear security purposes also include the purpose of ensuring the security of "civil nuclear construction sites" and of nuclear material which is being transported,

or expected to be transported, anywhere within the United Kingdom (including its territorial waters), to or from civil nuclear premises in the United Kingdom, or on ships registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 operating anywhere in the world (see *subsections (1)(d)* and *(g)* and *subsection (3)*). The definition of "civil nuclear construction site" is to be found in *subsection (3)* of this section. It includes the purpose of ensuring the security of civil nuclear sites under construction which are located within 5km of an existing nuclear site. The intention here is to capture within the ONR's purview regulatory responsibility for security sites which are in the vicinity of an existing nuclear site. This includes the eight sites which have been identified for possible nuclear new build in the *National Policy Statement for Nuclear Power Generation*. This purpose also extends to the ONR having responsibility for ensuring the security of "sensitive nuclear information" (as defined in *subsection (3)*).

Section 71: Notice by Secretary of State to ONR specifying sensitive nuclear information

361. This section relates to one of the areas of the ONR's nuclear security purposes, namely ensuring the security of sensitive nuclear information in the United Kingdom. "Sensitive nuclear information" is principally defined in *subsection (3)* of section 70 as information relating to, or capable of use in connection with, the enrichment of uranium i.e. the treatment of uranium that increases the proportion of isotope 235 contained in it (isotope 235 is fissile and can be used in the production of a nuclear weapon).

362. This section permits the Secretary of State, by notice to the ONR, to expand on the definition of "sensitive nuclear information" in connection with activities relating to nuclear premises, and thus also expand the purpose of the ONR in ensuring the security of such information. However, the power can only be exercised where the Secretary of State considers information should be protected in the interests of national security (see *subsection (1)*), and the Secretary of State must consult the ONR before issuing such a notice. This is to ensure that the ONR's civil nuclear security expertise is fed into any additional definition of sensitive nuclear information.

Section 72: Nuclear safeguards purposes

363. This section sets out the ONR's purposes relating to nuclear safeguards. There are two purposes here: firstly, ensuring compliance by the United Kingdom with its safeguards obligations and enabling or facilitating Ministers of the Crown in fulfilling their safeguards obligations, and secondly, developing future safeguards obligations.

364. Nuclear safeguards are measures to verify that States comply with their (predominantly international) obligations not to use nuclear materials from their civil nuclear programmes to manufacture nuclear weapons. The obligations to take these measures arise from international law, for example under the Euratom Treaty and other international agreements or undertakings and from domestic agreements or undertakings. The current key obligations on the United Kingdom Government, which are contained in the Euratom Treaty and agreements relating to the Treaty on the Non-Proliferation of Nuclear Weapons, are to be found in section 93(2). These primarily constitute "the safeguards obligations" for the purpose of the section. "Primarily" because the ONR will also be responsible for such further obligations as may be notified to the ONR by the Secretary of State under section 93(2)(d).

Section 73: Transport purposes

365. The ONR's transport purposes are to ensure that the civil transport of radioactive material in Great Britain by road, rail and inland waterway is carried out securely and in a manner that protects against the risks associated with such transport (see *subsection (1)*). The section defines "radioactive material" by reference to various international transport agreements that cover the transport of goods by road, rail

and inland waterway, and being consistent with those agreements ensures that all preparatory processes to transport (such as loading, packaging and delivery) are part of the ONR's remit (see *subsection (2)(b)* and *(c)* respectively). However, the agreements upon which the meanings of 'radioactive material' are based - ADR/RID/ADN - might fall away in future or become obsolete if new international agreements come into force, and so the definition is supported by a power for the Secretary of State to amend the definition by regulations (see *subsection (4)*).

366. The ONR's transport purposes do not extend to transport by sea and air as the transport of radioactive goods by these means is covered by separate regulatory regimes. However, the ONR's nuclear security purposes (as set out in section 70) do extend to ensuring the security of nuclear material that is being transported by sea and air (as well as land). Otherwise the transport of nuclear and radioactive material by air and sea is outside the ONR's purposes. The security of transport of nuclear material in Great Britain by road, rail and inland waterway is covered by both the transport purposes and the security purposes.

367. The ONR's transport purposes are also limited to civil transportation, and do not extend to transportation of radioactive material that is the responsibility of the Secretary of State for Defence (see *subsection (2)(a)*).

Chapter 2: Nuclear regulations

Section 74: Nuclear regulations

368. This section gives the Secretary of State the power to make regulations by statutory instrument generally subject to the negative resolution procedure for any of the following purposes: the nuclear safety, nuclear security, nuclear safeguards, and transport purposes. These regulations are referred to in the Act as "nuclear regulations".

369. Notably, the section does not give the Secretary of State power to make regulations for the nuclear site health and safety purposes. Although the ONR will have regulatory responsibility for conventional health and safety on nuclear sites, regulations will continue to be made for this purpose under section 15 of the Health and Safety at Work etc. Act 1974 rather than under this Act.

370. The section, together with Schedule 6, elaborates on the types of provision that may be included in nuclear regulations. These include provisions conferring functions on the ONR, creating offences (as set out further in section 75) and providing for defences to offences under any of the relevant statutory provisions (as defined in section 82). This list is not exhaustive, but indicative only.

371. Regulations may make provision applying to acts done outside the United Kingdom by United Kingdom persons (see *subsection (5)(a)*). For example regulations might impose duties on United Kingdom persons in relation to sensitive nuclear information when outside the United Kingdom. A United Kingdom person is defined in *subsection (6)*. In addition, regulations can be made in relation to United Kingdom ships carrying nuclear materials and operating anywhere in the world because of the way that the nuclear security purposes are defined (see section 59, *subsection (1)(g)*).

372. *Subsections (7) and (8)* require the Secretary of State to consult the ONR (unless the regulations are made to give effect, without modifications, to proposals from the ONR) and such other persons as he or she considers appropriate before making nuclear regulations. In addition, although any health and safety regulations made under section 15 of the Health and Safety at Work etc. Act 1974 will still regulate conventional health and safety on nuclear sites, it is conceivable nuclear regulations could affect the operation of such regulations. The Secretary of State is therefore required to consult the Health and Safety Executive if the proposed nuclear regulations will modify provisions of health and safety regulations (*subsection (7)(b)*).

373. *Subsections (9)* and *(10)* require any nuclear regulations which contain provision made exclusively for the safeguards or the security purposes, or exclusively for both, to identify where this is the case. The reason for this is that inspectors will not be able to issue improvement or prohibition notices under Part 2 of Schedule 8 when enforcing regulations made for safeguards or security purposes – see *paragraph 3(5)*of Schedule 8 to the Act. In addition, the regulation making power allows for regulations to be made in the security and safeguards spheres which extend to Northern Ireland.

Section 75: Nuclear regulations: offences

374. This section elaborates on the power to create offences within nuclear regulations set out in section 74(3)(c). Nuclear regulations can create offences which are triable only summarily or either summarily or on indictment (sometimes referred to as "triable either way"). Indictable only offences cannot be created (see *subsection (1)*).

375. *Subsections (2)* to *(5)* provide further detail on the criminal sanctions that can be imposed by nuclear regulations.

Section 76: Nuclear regulations: civil liability

376. *Subsections (1)* and *(2)* of this section provide that breaches of duties imposed by nuclear regulations, and those provisions of the Nuclear Installations Act 1965, that are relevant statutory provisions (see section 82(2)(b)) will not give rise to a claim for breach of statutory duty, irrespective of whether such breach also constitutes an offence. However, nuclear regulations may provide otherwise.

377. Nuclear regulations may also make provision for defences and that any term in an agreement that seeks to exclude or restrict liability imposed by such regulations will be void *(*see *subsection (3)).* This section will not affect any right of action or defence that might otherwise exist (see *subsection (5)*).

Chapter 3: Office for Nuclear Regulation

Section 77: The Office for Nuclear Regulation

378. This section establishes the ONR as a body corporate. Therefore, it will have a legal identity in its own right, independent of its members.

379. The section introduces Schedule 7 to the Act which covers a broad range of matters relating to the ONR, its constitution and how its staff and members are to be appointed and remunerated.

380. Schedule 7 also permits the ONR to authorise its staff, members, inspectors and committees to do, on its behalf, anything required to be done by the ONR (*paragraph 18*). The exercise of regulatory functions in particular cases can only be delegated to members of the ONR's staff (*paragraph 18(3)*) or inspectors appointed by the ONR under section 19 of the Health and Safety at Work etc. Act 1974. So, it will be possible to delegate such functions to executive members of the ONR (those listed under *paragraph 3*) and other members of suitably qualified staff of the ONR but not to non-executive members of the ONR (those listed under *paragraph 4*). Regulatory function is defined in section 112.

381. Committees of the ONR may include people who are not members of or members of staff of the ONR (see *paragraph 16(2)* of Schedule 7). However, such committees will not be able to perform regulatory functions in particular cases on behalf of the ONR but may, for example, carry out functions such as developing policies.

382. The ONR will not be a Crown body. ONR's staff and members will not be civil servants (see *paragraphs 1*, *5*and*14* of Schedule 7) but they will be treated as Crown servants for the purposes of the Official Secrets Act 1989 (see *paragraphs 6 and 14(3)* of

Schedule 7). Civil servants who are seconded to the ONR will continue to be civil servants during the period of secondment.

383. The ONR will consist of a predominantly non-executive "Board" numbering no more than 11 members including a non-executive chair, the Chief Nuclear Inspector and the Chief Executive Officer (the latter two being employees of the ONR), as well as further executive members (i.e. members who are employees of the ONR) and non-executive members (i.e. members who are not members of the ONR's staff). The ONR's staff includes both employees of the ONR and persons who have been seconded to it. The overall number of non-executive members (at least 5 but no more than 7) should always exceed the number of executive members (up to 4 in total) (see *paragraphs 2*, *3*and*4* of Schedule 7). In order to facilitate a close working relationship with the Health and Safety Executive, there is provision for the Health and Safety Executive to appoint one of its non-executive members to the ONR Board (see *paragraph 4(4)*) and for the ONR to appoint one of its non-executive members to the Health and Safety Executive's Board (see *paragraph 15 (4)* of Schedule 12).

384. Executive members will be appointed by the ONR and non-executive members, other than the Health and Safety Executive member, will be appointed by the Secretary of State (see *paragraph 4* of Schedule 7).

385. Under *paragraph 21* of Schedule 7, the ONR will be required to keep financial records, and submit accounts in respect of each financial year to the Secretary of State as well as to the Comptroller and Auditor General (who will need to audit the accounts and report on them to Parliament). "Financial year" is defined in *paragraph 28* of Schedule 7 as a period of 12 months ending on 31st March.

386. The ONR will also be required to prepare a long-term strategy for the carrying out of its functions and must act in accordance with this strategy (see *paragraph 22* of Schedule 7). The ONR will be required to consult when preparing its strategy, and the strategy will require Secretary of State approval before being laid before Parliament. The strategy may be reviewed at any time, but must be reviewed at least every 5 years.

387. The ONR will also be required, under *paragraph 23* of Schedule 7, to prepare an annual plan about its activities for each forthcoming financial year, which is to be approved by the Secretary of State, published and laid before Parliament. Additionally, the ONR will need to prepare, in respect of each financial year, a report to the Secretary of State on the performance of its functions during that year (see *paragraph 24* of Schedule 7).

388. The annual plan and associated report and the strategy (including revisions to it) must be laid before Parliament by the Secretary of State and published by the ONR (see *paragraph 25* of Schedule 7), although information may be redacted from the documents in the interests of national security.

389. The ONR may appoint employees and set the terms and conditions of that employment, including remuneration. ONR may also take on secondees to serve as members of ONR staff, for example, staff seconded from the Health and Safety Executive (see *paragraph 12* of Schedule 7).

390. Schedule 7 also covers a number of other financial matters. The Secretary of State may pay grants to the ONR with consent from the Treasury (see *paragraph 26*), and the ONR is empowered to borrow money – up to £35 million (with the possibility of that amount being extended up to £80 million by order made by the Secretary of State). This ability to borrow money gives ONR the option, for example, to make up interim shortfalls in cash flow from month to month when invoicing industry for ONR's nuclear site licensing costs quarterly.

391. The ONR is also given a power in *paragraph 20* of Schedule 7 to indemnify "ONR officers" in certain circumstances against all or any part of any personal liability that they might incur in the execution, or purported execution, of their functions. The ONR may only indemnify such officers if it is satisfied that the officer honestly believed

they were acting within their "relevant powers" and the act or omission giving rise to the liability is one that the ONR officer was required or entitled to do by virtue of being an ONR officer. "ONR officer" is defined in *paragraph 20(4)* of Schedule 7 as those appointed by the ONR as inspectors under the Act and under specified fire safety legislation, as well as under the Employers' Liability (Compulsory Insurance) Act 1969.

392. The power provided in *paragraph 20* of Schedule 7 is without prejudice to any other power the ONR may have to indemnify its staff, its members or persons appointed by it. It also does not apply where the ONR is otherwise required to indemnify its officers (see *paragraph 20(3)* of Schedule 7).

Chapter 4: Functions of the ONR

Functions of ONR: general

Section 78: Principal function

393. This section places the ONR under a general duty to do whatever it considers appropriate for its purposes including to assist others to further those purposes. This gives the ONR a general power to act to further its purposes in addition to the specific powers provided in the Act. This will ensure the ONR is capable of being flexible in its approach to regulation and adapting to a changing industry.

Section 79: Codes of practice

394. This section enables the ONR to issue, revise or withdraw codes of practice, which give practical guidance about the requirements of the relevant statutory provisions (defined in section 82(2)).

395. Failure to follow a code of practice will not be a criminal offence nor make a person liable to civil proceedings, but a relevant provision of the code will be admissible in evidence in criminal proceedings where a relevant statutory provision has allegedly been contravened and the code of practice was in place at the time of the alleged contravention (see *subsections (4)* to *(6)*).

396. Where an approved code of practice is used in court and the prosecution proves that the code was not followed, the defendant is taken to have failed to meet the requirement of the relevant statutory provision in question unless they can prove that they have complied in some other way (see *subsection (7)*).

Section 80: Procedure for issue, revision or withdrawal of codes of practice.

397. This section makes provision for a code of practice issued or revised by the ONR to be subject to a parliamentary process, akin to the negative procedure (see *subsection (8)*). The ONR will submit a draft code of practice, or a draft amendment to an existing code of practice, to the Secretary of State who may approve the draft code or amendment, with or without modification (see *subsection (6)*). Any modifications will require the consent of the ONR before they can be approved. Once approved, the Secretary of State will be required to lay the draft code or amendment before both Houses of Parliament for 40 days. If no resolution is made to oppose the code during that period, the ONR will be able to issue the code or (where what was submitted was an amendment to an existing code) revise the existing code together with a notice saying that the code has been revised. To withdraw a code, the ONR must seek approval from the Secretary of State (see *subsection (11)*) and publish a notice saying that the code has been withdrawn (see *subsection (12)(c)*).

Section 81: Proposals about orders and regulations

398. This section enables the ONR to submit proposals to the Secretary of State or the Health and Safety Executive for a number of different types of secondary legislation. First, proposals can be made to the Secretary of State for nuclear regulations (see Chapter 2

above), for orders or regulations under the "relevant enactments" listed in *subsection (2)* of the section, as well as proposals for regulations about fees to be made either under the Act or section 43 of the Health and Safety at Work etc. Act 1974. "Relevant enactments" captures legislation that relates to nuclear security and safeguards. The ONR may also submit proposals to the Health and Safety Executive for regulations to be made under section 15 of the Health and Safety at Work etc. Act 1974 where the proposals relate to the nuclear site health and safety purposes.

399. Before submitting any proposals to the Secretary of State or the Health and Safety Executive, the ONR must consult such persons (including government departments) as they are directed to by the Secretary of State and those persons who the ONR consider it is appropriate to consult (see *subsections (3)* and *(4)*).

Section 82: Enforcement of relevant statutory provisions

400. This section imposes a duty on the ONR to make adequate arrangements to enforce the "relevant statutory provisions", for example to employ sufficient inspectors and to ensure they are adequately resourced or, where the ONR makes arrangements for another to carry out the ONR's functions on its behalf (under section 95), that that person makes suitable arrangements and suitable financial provision etc. For these purposes "relevant statutory provisions" are the provisions of Part 3 of the Act and nuclear regulations as well as certain specified sections of the Nuclear Installations Act 1965 relating to the licensing of nuclear sites and the provisions of the Nuclear Safeguards Act 2000.

Section 83: Inspectors

401. This section introduces Schedule 8 which enables the ONR to appoint inspectors to inspect, investigate breaches of, and otherwise carry into effect, the "relevant statutory provisions" (as defined in section 82(2)). The Schedule also enables connected powers to be conferred on inspectors.

402. Part 1 of the Schedule provides the ONR with the power to appoint as inspectors such persons as appear to the ONR to be suitably qualified individuals. Inspectors must be appointed by a written instrument. This instrument will specify the powers in the Schedule (and may specify powers conferred upon that inspector by other legislation) that a particular inspector is able to exercise and the purpose for which that inspector may exercise the powers. Inspectors may only exercise powers specified in their instruments of appointment.

403. Part 2 of the Schedule gives authorised ONR inspectors (that is, authorised by their instruments of appointment) the power to issue improvement and prohibition notices. It also sets out the process for how such notices are to be issued, provides for the possibility of appeals against them and makes it a criminal offence to contravene these notices.

404. Improvement notices may be issued when, in the inspector's opinion, a person is breaching a relevant statutory provision or has breached a relevant statutory provision in circumstances that make it likely that such breach will continue. The notice will require the person to take action to remedy this situation within a stated period of time.

405. Prohibition notices may be issued when, in the inspector's opinion, relevant activities which are being carried out, or are likely to be carried out, pose a risk of serious personal injury. A prohibition notice would direct a person to ensure that the activities are stopped either immediately or within a specified period and are not resumed or carried out until the matters specified in the notice have been resolved.

406. Improvement and prohibition notices cannot be issued for matters relating to provisions of the Nuclear Safeguards Act 2000 or more generally for the safeguards or security purposes dealt with in nuclear regulations. This is because there are other specific

powers that inspectors will use instead. These include the powers to issue notices to require the disclosure of information.

407. *Paragraph 5* permits remedial action to be required under improvement and prohibition notices. For instance, a notice might include directions for remedying a situation that could refer to an approved code of practice and/or give a choice as to how to remedy the situation (see *sub-paragraph (3)*). The paragraph also sets out limitations that apply when an improvement notice is served that relates to the structure of a building (*sub-paragraphs (4)–(7)*). Unless the relevant statutory provision being breached imposes specific requirements which are stricter than relevant building regulations, a notice may not propose measures which are more onerous than those in the building regulations.

408. The arrangements for appealing against an improvement or prohibition notice are set out in *paragraph 6* of Schedule 8. An appeal may be made to an employment tribunal which can cancel a notice or confirm it (with or without modifications). The period within which an appeal must be made will be specified by the Secretary of State in regulations made under this paragraph. The operation of an improvement notice is automatically suspended until an appeal is withdrawn or finally determined. The operation of a prohibition notice instead can be suspended at the discretion of the tribunal, on an application from the appellant (see *sub-paragraphs (5)* and *(6)*). *Paragraph 7* of Schedule 8 sets out the offences associated with non-compliance with improvement and prohibition notices.

409. Part 3 of the Schedule sets out other powers that authorised inspectors may exercise in order to enforce, and otherwise carry into effect, the regulatory regime. These powers are broadly the same as those conferred on inspectors by the existing regulatory regime under the Health and Safety at Work etc. Act 1974. These include powers of entry, powers to seize or otherwise deal with articles or substances that are an imminent danger, and powers to take samples and to require information and documents.

410. The power of entry allows an authorised inspector to enter any non-domestic premises where the inspector considers it is necessary to carry out his or her duties. Entry is only possible at a reasonable time unless there is or may be a dangerous situation or to delay would be detrimental to the nuclear security purposes (see *paragraph 8*). This power of entry does not extend to domestic premises. Entry to such premises may be gained only by consent, with a warrant issued by a justice of the peace or in a situation judged by the inspector to be dangerous (see *sub-paragraphs (2)* and *(3)*). "Domestic premises" is defined in *sub-paragraph (5)*.

411. Part 4 of the Schedule deals with supplementary matters. *Paragraph 23* places a duty on inspectors to provide certain information to employees relevant to their health, safety or wellbeing. This information might include, for example, that a prohibition notice had been served on a particular activity. Where information is provided to employees or representatives, the inspector must provide the same information to the employer.

412. *Paragraph 24* provides definitions for terms used in the Schedule.

413. In addition to the above,*paragraph 10* of Schedule 10 also makes provisions in relation to ONR inspectors to allow authorised inspectors to prosecute before a magistrates' court in England and Wales an offence under any of the relevant statutory provisions.

Section 84: Investigations

414. This section empowers the ONR to, or to authorise another person to, investigate and produce a special report on certain defined matters, called "relevant matters". These matters include any accident or occurrence or situation which it considers it is desirable to investigate for any of its purposes. They also cover any matter which the ONR considers it is desirable to investigate with a view to making nuclear regulations or regulations under section 15 of the Health and Safety at Work etc. Act 1974 for the nuclear site health and safety purposes. Thus, for example, the ONR might ask a third

party to carry out a study and report to it about the effectiveness of regulations in ensuring the safe and secure transport of nuclear materials in Great Britain.

415. Under *subsection (2)*, the ONR may publish all or part of a special report. However, *subsection (7)* provides that this is subject to section 94, and the consent of the Secretary of State must be sought for the publication of any communication which falls within section 94 (see *subsection (2)* of this section).

416. This section also gives the ONR the necessary powers to make payments to anyone (provided they are not a member of the ONR or a member of its staff) who carries out (or assists in) an investigation or makes (or assists in the making of) a special report (see *subsections (4)* and *(5)*).

417. Before investigating a matter which appears to the ONR to be, or is likely to be, relevant to the "railway safety purposes", it must consult the Office of Rail Regulation (see *subsection (6)*). "Railway safety purposes" is defined in paragraph 1 of Schedule 3 to the Railways Act 2005 and relates, for example, to protecting the public or people at work from risks arising from the operation of railways.

Section 85: Inquiries

418. This section gives the ONR the power to arrange for an inquiry to be held, where it considers it necessary or desirable for any of its purposes. However, the Secretary of State's approval must be given for an inquiry to take place (see *subsection (1)*). In addition, any such inquiry must be held in accordance with regulations made by the Secretary of State (see *subsection (3)*). Regulations here may confer powers on the person holding the inquiry (or anyone assisting) to enter premises to acquire information or take evidence on oath and summon witnesses.

419. Unless provided otherwise in regulations, the inquiry must be held in public and the report arising from the inquiry published (*subsections (4)* and *(5)(b)*). No inquiry is to be held under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, into a matter arising is Scotland which causes the death of a person, unless the Lord Advocate directs otherwise (*subsection (8)*).

Section 86: Inquiries: payments and charges

420. This section allows the ONR to make payments to anyone who holds an inquiry under section 85 or an assessor who assists in such an inquiry. Payments may take the form of remuneration or allowances or expenses.

421. In addition, *subsection (2)*, allows the ONR to pay expenses to witnesses attending inquiries and *subsection (3)* allows the ONR to make other payments to meet the costs of an inquiry.

422. *Subsections (4)* to *(6)* enable the ONR, with the consent of the Secretary of State, to require such persons as it considers appropriate to make payments in connection with an ONR inquiry. The costs recovered under this provision cannot exceed the ONR's costs associated with the inquiry (*subsection (5)*) and the underlying purpose of the section is to enable the ONR to pass the connected cost on to industry. For example, if an inquiry related to a specific nuclear site, it might be appropriate for the ONR to apportion some or all of the costs of an inquiry to the holder of the licence for the relevant site.

Other functions

Section 87: Provision of information

423. The section places a duty on the ONR to make such arrangements as it considers appropriate for the dissemination of information, for example to industry and the public, that is relevant to its purposes. In compliance with this duty, for instance, the ONR might publish information in print or on its website in order for employers and employees to

be better informed about the health and safety risks peculiar to the nuclear industry and how these risks can be managed.

Section 88: Research, training etc

424. This section permits the ONR to undertake research, or arrange for someone else to carry out research, in relation to any matter connected with its purposes. It imposes an obligation on the ONR, if it thinks it appropriate, to publish, or arrange the publication of, the results of any research. In addition, the section empowers the ONR to provide training or make arrangements for training through third parties (*subsection (3)*) for any of its purposes.

425. Under *subsections (1)(a)* and *(2)* the ONR is given the necessary powers to pay for others to carry out research or publish the results on its behalf. *Subsection (4)* entitles the ONR to charge for the training that it provides. The power to publish the results of research is subject to general prohibitions on disclosure contained within the Act (in particular in Schedule 9) and in other legislation.

Section 89: Provision of information or advice to relevant authorities

426. Under this section**,** a duty is imposed on the ONR to provide certain information or advice if it is requested to do so by "a relevant authority". The "relevant authorities" are: Ministers of the Crown, the devolved administrations, the Health and Safety Executive, the Health and Safety Executive for Northern Ireland, the Civil Aviation Authority and the Office of Rail Regulation (see *subsections (1)* and *(8)*).

427. The information which may be requested by any of these authorities (and thus needs to be provided by the ONR to the person requesting it) must be about the ONR's activities (including those of its inspectors: see *subsection (3)*) and connected to a matter of concern to the authority requesting it (*subsection (2)(b)*).

428. In addition, a Minister of the Crown may also make a request for information for the purpose of monitoring the ONR's performance of its functions or for the purpose of any proceedings in Parliament (*subsection (2)(a)*).

429. In the case of advice, the advice requested must relate to a matter which is of concern to the authority requesting it and be within the expertise of a member, employee or other member of staff (such as a secondee) of the ONR (*subsection (4)*), or be relevant to any of the ONR's purposes. The ONR is entitled to charge for the provision of information to a relevant authority by virtue of *subsection (5)*, although regulations made by the Secretary of State under *subsection (6)* may prevent charging in particular cases, classes of cases or circumstances.

Section 90: Arrangements with government departments etc

430. *Subsection (1)* permits the ONR, by agreement, to perform functions of Ministers of the Crown, government departments and other public authorities (whether or not those functions fall within the ONR's purposes). These agreements can be entered into without the Secretary of State's consent if the function being delegated is the Health and Safety Executive's function of investigating or making a special report under section 14 of the Health and Safety at Work etc. Act 1974, or a similar function of the Office of Rail Regulation under the Railways Act 2005 (see *subsection (2)(a)(i)* and *(ii)*). Otherwise, such an agreement may only be entered into if the Secretary of State considers the ONR can perform the function appropriately.

431. Whilst the section permits agreements for the ONR to perform the functions of a Minister of the Crown that arise at common law, it does not permit the ONR to make legislation on behalf of another person (*subsection (3)*).

432. The agreement between the ONR and the other government department or public body may include provisions for payment.

433. The section permits the ONR to provide services or facilities that are outside its purposes, and to charge for these, in connection with a government department's or other public authority's functions (see *subsection (5)*).

434. This section broadly allows for flexibility in the ONR's role and for it to take on the functions of other bodies, where it can appropriately do so. This places the ONR in a similar position to the Health and Safety Executive, which carries out a number of functions under similar provisions set out in section 13 of the Health and Safety at Work etc. Act 1974.

Section 91: Provision of services or facilities

435. *Subsection (1)* allows the ONR to provide services or facilities to any person for the ONR's purposes. This would allow, for example, the ONR to provide advice and information on nuclear information security to a (United Kingdom) company that was expecting to become a holder of sensitive nuclear information.

436. *Subsection (2)* would also allow the ONR to carry out activities that are within its expertise but not within its purposes. This can only be done with the permission of the Secretary of State. Examples of these activities would include providing advice on nuclear matters to other nations or to those in the United Kingdom who are manufacturing nuclear parts for an international market (not in the United Kingdom). The section provides for the ONR to undertake such activities, at a cost to be agreed by both parties. This would allow it to provide such services at a commercial rate, rather than on the basis upon which the Secretary of State sets the ONR's fees under section 101.

Exercise of functions: general

Section 92: Directions from Secretary of State

437. This section enables the Secretary of State to make directions to the ONR. There are three separate powers of direction.

438. Under the first of these, set out in *subsections (1)* and *(2)*, the Secretary of State has the power to give directions to the ONR about how it must perform its functions, and such directions may be specific or of general application. This power might be used, for example, to direct the ONR to conduct a review into nuclear site licence conditions, or to conduct an investigation into the effectiveness of the nuclear security regime at nuclear sites. This power can be used to modify a function of the ONR although it cannot be used to confer additional functions on the ONR.

439. *Subsections (3)* and *(4)* allow the Secretary of State to issue a direction, in the interests of national security, which can modify or confer a function on to the ONR (*subsection (4)(a)* and *(b)*).

440. Neither of the powers to give directions set out in *subsection (1)* or *(3)* can be used to issue a direction in relation to the exercise of a regulatory function in a particular case (*subsection (5)*). This reflects the fact that although the Secretary of State is able to exercise some controls over the ONR it is an independent regulator and the Secretary of State should not be able to overrule its expertise in individual regulatory circumstances.

441. *Subsection (6)* allows the Secretary of State to give a direction to the ONR in a specific instance with regard to a regulatory function (such as to react to specific information received by government in order to ensure the security of nuclear premises). Such a direction can only be given where the Secretary of State is satisfied that it can be justified because there are exceptional circumstances relating to national security. The direction may only be given for nuclear security purposes (*subsection (7)*). This exceptional power reflects the particular expertise that government may have in the sphere of security, but the power is only exercisable in very limited circumstances.

442. In order to provide some transparency about the exercise by the Secretary of State of a power to overrule the ONR in such circumstances, directions made under this section must be laid before Parliament. However, this is unless the Secretary of State considers that making public the direction would be contrary to the interests of national security. In such an instance, a memorandum, stating that a direction has been given and its date, must be laid before Parliament (*subsections (8)* and *(9)*).

Section 93: Compliance with nuclear safeguards obligations

443. *Subsection (1)* imposes an obligation on the ONR to do such things as it considers are best calculated to ensure compliance by the United Kingdom or to enable or facilitate compliance by a Minister of the Crown, with the "safeguards obligations".

444. "Safeguards obligations" are principally defined in relation to Articles 77 to 85 of the Euratom Treaty and two international agreements made in connection with the Treaty on the Non-Proliferation of Nuclear Weapons (see *subsection (2)(a)* to *(c)*). The overall purpose of these safeguards obligations is to provide confidence that States do not use nuclear material from civil nuclear programmes to manufacture nuclear weapons. The obligations in question require the United Kingdom Government to provide information to the International Atomic Energy Agency and the European Commission about nuclear material held within the United Kingdom and the use of technology linked with the processing or enrichment of nuclear material.

445. In addition, "safeguards obligations" is defined to include any further obligations or agreements that the Secretary of State specifies in a notice to the ONR (see *subsection (2)(d)*). The Secretary of State must consult with the ONR before issuing such a notice (*subsection (4)*). The power here is intended to provide flexibility in the ONR's safeguards remit so it can also be required to ensure compliance with other existing international agreements and any new agreements which the United Kingdom may enter into in the future relating to safeguards, as well as any undertakings that Ministers may make in relation to safeguards matters.

Section 94: Consent of Secretary of State for certain communications

446. This section requires the ONR to seek consent from the Secretary of State before it issues certain communications relating to both the ONR's nuclear security policy and the government's national security policy. The specific ONR communications to which this section applies are any ONR security guidance or any statement of the ONR's nuclear security policy to the extent that the ONR considers that either of those things relate to government policy on national security (see *subsection 2(a)*). It also allows the Secretary of State to direct the ONR to seek his or her consent to the publication of certain descriptions of material (see *subsection 2(b)*). The ONR will not have to seek the consent of the Secretary of State before publishing any code of practice issued by the ONR under section 79, the ONR's plan, strategy or a report made under *paragraph 24* of Schedule 7 or advice given in a particular case (see *subsection (3)*).

447. The Secretary of State can only use such a direction in relation to communications which he or she considers satisfies the twin tests of relating to government policy on national security matters and being relevant to the ONR's security policy (for example by containing security guidance or information about that policy) (see *subsection (5)*). Therefore this power is limited only to communications associated with both the ONR's nuclear security policy and government national security policy. It does not relate to any of the ONR's purposes other than the ONR's security purposes.

448. In order to minimise any administrative burdens, the Secretary of State may issue a general consent in relation to a particular description of guidance which will exempt the ONR from having to seek consent to issue such documents (see *subsections (6)* and *(7)*).

Section 95: Power to arrange for exercise of functions by others

449. The effect of this section is to enable the ONR to delegate any of its functions to any person, subject to obtaining the Secretary of State's consent. The section also permits the ONR to pay the person to whom it has delegated for the performance of the function.

450. *Subsection (2)* provides that the Secretary of State may only give his or her consent to the ONR delegating a function, if he or she considers that the person to whom it is proposed to delegate can perform the function appropriately.

Section 96: Co-operation between ONR and Health and Safety Executive

451. This section requires the ONR and the Health and Safety Executive to enter into arrangements (and to maintain, review and revise these from time to time) in order to ensure mutual co-operation and the exchange of information about their respective functions. This will help to ensure that the two regulators have a consistent approach to the regulation of health and safety, and that interfaces between their respective health and safety enforcement activities are effectively managed.

Information etc

Section 97: Power to obtain information

452. This section allows the ONR to require a person to provide it with any information that it requires for the purposes of carrying out its functions. Refusal or failure to comply with a notice requiring information is a criminal offence (*subsection (5)*).

453. This section might be used, for example, to require the provision of certain safeguards related information such as records detailing quantities and locations of nuclear material.

454. Notices may impose a continuing requirement to provide information, for example to provide quarterly returns as opposed to simply imposing one-off requirements for information (see *subsection (2)*).

455. Notices under this section cannot be used where a notice under section 2 of the Nuclear Safeguards Act 2000 could be used instead (see *subsection (4)*). The reason for this is that the 2000 Act contains a specific power to obtain information related to the protocol signed at Vienna on 22nd September 1998 additional to the agreement for the application of safeguards in the United Kingdom in connection with the Treaty on the Non-Proliferation of Nuclear Weapons (the "additional protocol"). This subsection therefore ensures that the specific power in the 2000 Act is used to obtain such additional protocol information rather than the more generic power included in this section.

Section 98: Powers of HMRC in relation to information; and Section 99: HMRC power to seize articles etc to facilitate ONR and inspectors

456. Section 98 enables the Commissioners for Her Majesty's Revenue and Customs (HMRC) to provide the ONR or an ONR appointed inspector with information about imports whether or not it has been requested (see section 98(3)). Section 99 allows an officer of HMRC (an HMRC officer) to seize and detain imported goods to facilitate the ONR or its inspectors in the exercise of their functions. Anything that is seized for this purpose may only be detained for a maximum of 2 working days (see section 99(1) and (5)(a)).

457. The Borders, Citizenship and Immigration Act 2009 provides for functions of HMRC that are "general customs matters" to be exercised concurrently by both HMRC and the Secretary of State. It makes specific provision for references to HMRC in enactments, instruments and documents to be interpreted as references to the Secretary of State (see section 1(6) of that Act), but that provision would not apply to provision made in this Act. In order to ensure that the functions conferred on the HMRC by this section can

be exercised by the Secretary of State (as necessary) a consequential amendment has been made to this section of the 2009 Act. This preserves the split in functions put in place by the 2009 Act, section 1.

458. Section 7 of the 2009 Act provides for functions of HMRC that are "customs revenue matters" to be exercised concurrently by both HMRC and the Director of Border Revenue. It makes specific provision for references to HMRC in enactments, instruments and documents to be interpreted as references to the Director of Border Revenue (see section 7(7) of that Act), but that provision would not apply to provision made in this Act. In order to ensure that the functions conferred on the HMRC by this section can be exercised by the Director of Border Revenue (as necessary) the Act makes a consequential amendment to the 2009 Act (see *paragraph 101* of Schedule 12). This preserves the split in functions put in place by the 2009 Act, section 7.

459. The 2009 Act also allows for certain functions of HMRC officers to be exercised by designated general customs officials (see section 3 of that Act) and designated customs revenue officials (see section 11 of that Act). In order to ensure that designated general customs officials and designated customs revenue officials can exercise the functions in these sections specific provision is made in sections 3(7)(b) and 11(6)(b) respectively.

Section 100: Disclosure of information

460. This section introduces and gives effect to Schedule 9 (disclosure of information).

461. The Schedule prohibits the disclosure of "protected information" otherwise than in accordance with the specific gateways in that Schedule. "Protected information" is information acquired compulsorily by the ONR, its inspectors, an ONR inquiry official, or any other person under the relevant statutory provisions, together with information acquired by the ONR's inspectors in the course of exercising their powers and information provided under section 98. It is a criminal offence to disclose "protected information" otherwise than in accordance with Part 3 of the Schedule (*paragraphs 2*and*3* of Schedule 9). It is also an offence for certain persons to use information disclosed under the Schedule otherwise than as permitted by Part 3 of the Schedule (*paragraph 4* of Schedule 9). Information will not be protected information if it is in the public domain (*paragraph 1(2)* of Schedule 9).

462. It is a defence for a person charged with the offences in *paragraphs 3*and*4*of the Schedule to prove that either they did not know and had no reason to suspect the information disclosed was protected information, or they have taken all reasonable precautions and exercised all due diligence to avoid committing the offence (see *paragraph 5* of Schedule 9). Disclosing protected information, except as permitted by the exceptions described below, is an offence which can be tried either in the Magistrates' Court or in the Crown Court (see *paragraph 6* of Schedule 9).

463. One exception to the prohibition on disclosure of protected information is disclosure with appropriate consent (see *paragraph 7*of Schedule 9). This will in most cases be the consent of the person who provided the information or from whom the original recipient obtained it. Specific provision is made for cases where information is obtained as a result of entry to premises by ONR inspectors or ONR inquiry officials (see *paragraph 7(2)* of Schedule 9).

464. Additional gateways are provided for disclosure of "protected information" in cases where appropriate consent is not obtained by the original holder of the information or a person who obtains it directly or indirectly from the original holder. These gateways permit disclosure to certain persons such as to the ONR, an officer of the ONR, a Minister of the Crown, the devolved administrations, certain organisations that the ONR will work closely with or will have shared interests with, such as the Health and Safety Executive and Environment Agency (see *paragraphs 9 and 10(2)* of Schedule 9), local authority officers (see *paragraph 14* of Schedule 9) and a police constable authorised to receive the information (see *paragraph 15(1)* of Schedule 9). The Schedule puts

restrictions on the purposes that this information can be used for by certain of the people or bodies to whom information is disclosed under this Schedule (see *paragraphs 10(3)*, *11(2)*, *12(2)*, *13(2)*, *14(2)*and*15(2)* of Schedule 9).

465. Disclosure can also take place for the purpose of an ONR inquiry, investigation or legal proceedings (see *paragraph 17* of Schedule 9); if the information is released in a way that prevents it from being identified as relating to a particular person or case (see *paragraph 21* of Schedule 9); or to permit statements of facts to be made in certain cases by inspectors or ONR Inquiry Officials (see *paragraph 18(c)* of Schedule 9). The ONR, an inspector, a health and safety inspector or an inquiry official may also disclose information for any of the purposes specified in section 17(a)-(d) of the Anti-Terrorism, Crime and Security Act 2001 (see *paragraph 19* of Schedule 9). In addition, disclosures which are made to comply with an obligation under certain freedom of information legislation are not contrary to *paragraph 2* of the Schedule (see *paragraph 16* of Schedule 9). Disclosure is also permitted where it is for the purposes of any safeguard obligations (see *paragraph 20* of Schedule 9).

466. Part 4 of the Schedule makes clear that the restrictions on disclosure imposed by this Schedule do not mean that 'protected information' under this Schedule is 'exempt information' for the purposes of the Freedom of Information Act 2000, or the Freedom of Information (Scotland) Act 2002 (which would not be required to be disclosed under those Acts) (see *paragraph 22*). The prohibitions on disclosure in the Schedule are to be disregarded for the purposes of specified provisions of the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002. This Part of the Schedule also makes clear that it does not permit or require the disclosure of any protected information if that disclosure would be prohibited by or under any other provision of primary legislation. Such restrictions will in particular include those in sections 79 and 80 of the Anti-terrorism, Crime and Security Act 2001 (which relate to the disclosure of information relating to nuclear security and information relating to uranium enrichment technology, respectively) (see *paragraph 23* of Schedule 9).

Fees

Section 101: Fees

467. *Subsection (1)* enables the Secretary of State, by regulations, to make provision for fees to be payable in connection with the performance of the ONR's functions under the relevant statutory provisions and under regulations made under section 80 of the Anti-terrorism, Crime and Security Act 2001. This power supplements those found in section 43 of the Health and Safety at Work etc. Act 1974, which enable regulations to be made for the payment of fees in connection with the ONR's performance of its functions under that Act and section 24A of the Nuclear Installations Act 1965, which provides for the recovery of costs incurred in connection with nuclear site licence activities and nuclear safety research. The power will therefore be additional to the existing cost recovery powers, in section 43 and section 24A of the Acts identified above, and will increase ONR's capacity to recover its costs.

468. Regulations made under this power must either specify the fee's amount or the process by which the fee will be determined. Fees under the regulations could be determined, for example, by reference to a daily or hourly rate specified in the regulations or by reference to the reasonable costs of performing the function or carrying out the relevant work (see *subsection (2)*).

469. Regulations made under this section cannot require a fee to be paid by anyone in the capacity of four specified categories of person: an employee; a person seeking employment; a person training for employment; or a person seeking training for employment (see *subsection (4)*).

470. The power contained in this section provides for fees recovery only and any exercise of this power will be required to follow government guidelines on the setting of fees.

Chapter 5: Supplementary

General duties of employers, employees and others

Section 102: General duty of employees at work in relation to requirements imposed on others

471. *Subsection (1)* of this section places a general duty on employees, whilst at work, to co-operate with those who have duties under the relevant provisions (defined in *subsection (5)(b)*), as far as is necessary, to enable those duties to be complied with. An example of such co-operation would be to comply with a nuclear safety policy implemented at a site as part of a responsibility under a relevant statutory provision.

472. Failure to comply with this provision is an offence which is triable either way. This section does not apply to duties relating to the Nuclear Safeguards Act 2000 or any regulation made under section 74(10) solely for nuclear safeguards purposes (see *subsection (5)(b)*).

473. Similar provision already exists in section 7 of the Health and Safety at Work etc. Act 1974 in relation to requirements imposed by or under the relevant statutory provisions of that Act. The duties under that section already apply in relation to many duties that the ONR will be responsible for enforcing under the Act (including provisions of the Nuclear Installations Act 1965 and regulations relating to the carriage of radioactive materials). Replicating this provision in the Act ensures that the regulatory framework is not changed when functions are transferred from the Health and Safety Executive to the ONR.

Section 103: Duty not to interfere with or misuse certain things provided under statutory requirements

474. This section makes it an offence (triable either way) to intentionally or recklessly interfere with anything provided in the interests of health, safety or welfare under the relevant statutory provisions. For example, it would be an offence to recklessly remove a piece of safety equipment that has been installed in the interest of nuclear safety under a requirement of a relevant statutory provision.

475. Similar provision already exists in section 8 of the Health and Safety at Work etc. Act 1974 in relation to requirements imposed by or under the relevant statutory provisions of that Act. The duties under that section already apply in relation to many duties that the ONR will be responsible for enforcing under the Act (including provisions of the Nuclear Installations Act 1965 and regulations relating to the carriage of radioactive materials). Replicating this provision in the Act ensures that the regulatory framework is not changed when functions are transferred from the Health and Safety Executive to the ONR.

Section 104: Duty not to charge employees for certain things

476. This section creates an offence for an employer to impose a charge on an employee for anything done or provided for the purposes of a specific requirement of a relevant provision (as defined in section 102(5))(b)). For example, an employer would be committing an offence if they charged employees for specific nuclear safety personal protective equipment required under nuclear regulations or for security vetting required under relevant statutory provisions.

477. Similar provision already exists in section 9 of the Health and Safety at Work etc. Act 1974 in relation to requirements imposed by or under the relevant statutory provisions of that Act. The duties under that section already apply in relation to many duties that the ONR will be responsible for enforcing under the Act (including provisions of the Nuclear Installations Act 1965 and regulations relating to the carriage of radioactive materials). Replicating this provision in the Act ensures that the regulatory framework

is not changed when functions are transferred from the Health and Safety Executive to the ONR.

Offences

Section 105: Offences relating to false information and deception

478. This section creates an offence for a person to knowingly or recklessly make a false statement in response to a requirement under a relevant statutory provision or for the purpose of obtaining the issue of a document under any of those provisions. This includes information provided to the ONR or its inspectors for the purposes of those provisions. Offences are also created for the making of false statements or entries in documents issued under the relevant statutory provisions as well as using counterfeit documents with the intent to deceive (see *subsections (3)(a)* and *(5)(a)*).

Section 106: Provision relating to offences under certain relevant statutory provisions

479. This section introduces Schedule 10 which contains provisions relating to offences. The Schedule sets out provisions for determining the location where an offence has been committed (*paragraph 2* of Schedule 10) and provides details of the circumstances under which the time for bringing summary proceedings can be extended such as an ongoing inquiry or investigation being carried out by the ONR (*paragraphs 3*and*4* of Schedule 10). The Schedule also covers the circumstances under which an offence is deemed to continue (*paragraph 5* of Schedule 10); where the offence is the fault of another person (*paragraph 6* of Schedule 10); the approach to be taken in terms of liability when the offence is committed by a body corporate or a partnership (*paragraphs 7*and*8* of Schedule 10); who can institute proceedings in England and Wales (*paragraph 9* of Schedule 10); and that an authorised inspector may prosecute proceedings in a magistrates' court (although not in Scotland) (*paragraph 10* of Schedule 10).

480. The Schedule also provides that, if regulations under this Part create an offence consisting of a failure to comply with a duty to do something so far as practicable, then regulations may also provide that the burden of proof passes to the defendant to prove that it was not practicable to do more than was in fact done (*paragraph 11* of Schedule 10). *Paragraph 12* of Schedule 10 provides for the admissibility in evidence of the fact that an entry has been made on a relevant register or record, where there is a requirement to do so, or the fact that it has not been recorded in that record or register and *paragraph 13* of Schedule 10 sets out how a court can order the consequences of an offence to be remedied in the event that it is possible to do so.

Supplementary

Section 107: Civil liability: saving for section 12 of the Nuclear Installations Act 1965

481. This section prevents anything in Part 3 of the Act, including in regulations made under any provision of that Part, from limiting the effect of section 12 of the Nuclear Installations Act 1965. That section ensures that compensation for damage caused by occurrences involving nuclear matter or emissions of ionising radiations on or from nuclear licensed sites are payable only in accordance with the provisions of the 1965 Act.

Section 108: Reporting requirements of Secretary of State

482. Under this section, the Secretary of State must make a report to both Houses of Parliament, in respect of each financial year and as soon as reasonably practicable after the end of the relevant financial year, on how the Secretary of State's powers under the

Act in relation to the ONR have been exercised. The report must be laid before each House.

483. The purpose of this annual reporting is to facilitate Parliamentary scrutiny of powers exercised by the Secretary of State in relation to the ONR, for instance, the appointment or dismissal of ONR non-executive members, approving the appointment of the Chief Nuclear Inspector or the Chief Executive Officer, the modification of the ONR's strategy or annual plan or the use of the Secretary of State's power of direction.

Section 109: Notices etc

484. This section contains a variety of provisions relating to notices served under any of the "relevant statutory provisions" other than the provisions of the Nuclear Safeguards Act 2000 ("relevant statutory provisions" is a phrase which is defined in section 82 of the Act and includes Part 3 of the Act, nuclear regulations, certain provisions of the Nuclear Installations Act and the 2000 Act).

485. The section provides that any such notice must be made in writing and sets out how valid service of a notice may be effected for example, by delivery to the person (*subsection (3)(a)*), to the director, manager, or secretary or other officer of a body corporate (*subsection (4)(a)*), or a partner or other person with control of a partnership (*subsection (4)(b)*).

486. *Subsection (9)* sets out the method of delivery for notices that are to be given to the owner or occupier of a premises. *Subsection (10)* allows for exceptions to this where the name or address of the owner or occupier of the premises cannot be ascertained through reasonable inquiry.

Section 110: Electronic delivery of notices etc

487. This section permits the ONR to serve notices by means of electronic communications (such as by e-mail), provided the person who is to receive the notice has consented to the method of service (see *subsection (2)*). In order for that consent to be validly given, or willingness as it is described in the Act, it needs to satisfy the conditions in *subsections (3)(a) to (d)*, and it may be modified or withdrawn, see *subsection (3)(e)*.

Section 111: Crown application: Part 3

488. This section covers the application of Part 3 of the Act to the Crown. Part 3 and regulations made under it will apply to the Crown subject to certain exceptions which are listed in *subsections (2)* and *(3)*. In addition, the Secretary of State can, by means of secondary legislation, amend this section so as to alter the way in which Part 3 or provision made under it applies to the Crown (see *subsection (6)*).

Section 112: Interpretation of Part 3

489. This section sets out definitions for various terms used in Part 3 of the Act.

Section 113: Subordinate legislation under Part 3

490. Any orders and regulations made under Part 3 (including the Schedules introduced by this Part) will be made by statutory instrument (*subsection (1)*). As a general rule, such orders and regulations will be made subject to annulment by either House of Parliament (see *subsection (4)*). There are several exceptions to this rule relating to where regulations are the first nuclear regulations to be made; or where they modify or repeal any part of the Nuclear Installations Act 1965, or the Nuclear Safeguards Act 2000; or where they create a new offence. In these circumstances the statutory instrument containing such regulations must be approved by a resolution of each House of Parliament (see *subsection (3)*). Where an existing offence is revoked or re-enacted

by nuclear regulations, it would not constitute the creation of a new offence for the purposes of this section.

491. Another exception concerns orders made under *paragraph 26* of Schedule 7 to raise the limit on how much the ONR may borrow (see *subsection (4)*). Such orders must be positively approved by the House of Commons before they can be made.

492. In addition, orders made under section 111 must be approved by both Houses of Parliament before they can be made by the Secretary of State (see *subsection (2)(b)*).

Section 114: Transitional provision etc

493. This section allows for the Secretary of State by order to make provisions for transitional arrangements which appear to him or her to be appropriate in consequence of, or in connection with, Part 3. Specifically, such arrangements can include amending legislation made before the end of the session in which this Act is passed, and can include provision treating relevant existing regulations as 'relevant statutory provisions', regulations made under section 85 (inquiries) or under section 101 (fees) (see *subsection 2(b)*). Only regulations which are relevant to the ONR's purposes or fees payable in respect of functions relating to them are within scope of this provision (see *subsection (3)*). This provision will allow the statutory ONR to continue to enforce these existing regulations or charge fees under them for a transitional period, to ensure continuity following its creation if there is not time to amend or replace the regulations in advance of that event.

Section 115: Transfer of staff etc

494. This section introduces Schedule 11 which makes provision for the Secretary of State to make schemes transferring staff and property from the Health and Safety Executive to the ONR and property from the Secretary of State to the ONR.

495. Part 2 of Schedule 11 provides the Secretary of State with the power to make "staff transfer schemes". That is to say schemes to transfer staff into the ONR who are employees of the Health and Safety Executive and have been assigned to work in the interim ONR (see *paragraph 3(2)* of Schedule 11). Staff transfer schemes may include any provisions that have the same or similar effect as the *Transfer of Undertakings (Protection of Employment) Regulations 2006*. The transfer may include the transfer of employee's records from the Health and Safety Executive to the ONR, this is included in the broad power to create a transfer under *paragraph 4(1)* of Schedule 11.

496. Part 3 of Schedule 11 provides the Secretary of State with the power to make schemes transferring qualifying property, rights and liabilities from the Health and Safety Executive or the Secretary of State to the ONR. All transfers of this type will be associated with the functions that the ONR will carry out in future. The property transfer scheme may include provision in respect of the continuity of legal proceedings, to apportion rights and liabilities and to transfer property rights or liabilities that could not otherwise be transferred or assigned (see *paragraph 10(1)(d)* of Schedule 11). No provision can be made in such a scheme in connection with rights or liabilities arising under or in connection with contracts of employment (see *paragraph 9(2)* of Schedule 11).

497. Part 4 of Schedule 11 requires that the Secretary of State must consult those likely to be affected by a staff or property transfer, and where consultation has already taken place prior to such a transfer, he or she must have regard to the results of that consultation (see *paragraph 12* of Schedule 11). This consultation may be carried out by a person other than the Secretary of State. This allows the interim ONR to engage in consultation on these key issues prior to Royal Assent. The Secretary of State also has the power to modify transfer schemes before they come into force, as long as appropriate consultation can be shown to have taken place. Modifications can be made to such

schemes after they have come into force but only with the agreement of the persons affected by those modifications (section 153(3)).

Section 116: Minor and consequential amendments

498. Schedule 12, which *subsection (1)* of this section gives effect to, contains a number of minor and consequential amendments to various enactments. In addition, *subsection (2)* confers a power on the Secretary of State to, by order, make further consequential amendments to legislation in consequence of Part 3 of the Act.

499. Part 1 of the Schedule makes various amendments to the Health and Safety at Work etc. Act 1974 which are consequential on functions in respect of nuclear safety, nuclear site health and safety, security, safeguards and transport of radioactive materials being carried out in future by the ONR and not the Health and Safety Executive.

500. These amendments include, among others, amendments to section 18 of the Health and Safety at Work etc. Act 1974, to make ONR responsible for the enforcement of any of the relevant statutory provisions of that Act, in relation to GB nuclear sites (see *paragraph 6* of Schedule 12) except where health and safety regulations provide for the Office of Rail Regulation to be responsible for enforcement. The amendments made by *paragraph 6(3)(d)* of Schedule 12 to section 18 ensure provision can be made for responsibility for enforcement to be assigned to either the ONR or the Office of Rail Regulation in cases of uncertainty. In addition, the amendments provide for the ONR to be made an enforcing authority by means of regulations made under that Act. This will allow the ONR to take responsibility for the enforcement of provisions of the 1974 Act at sites other than GB nuclear sites. These sites could include, for example, the non-licensed, defence-related nuclear sites where the interim ONR currently enforces certain statutory provisions of the 1974 Act as part of Health and Safety Executive, as well as sites which are intended to become nuclear sites.

501. The Schedule also makes amendments to Schedule 2 of the 1974 Act to enable the appointment of an ONR member of the Health and Safety Executive (see *paragraph 15* of Schedule 12), just as *paragraph 4(4)* of Schedule 7 enables the Executive to appoint a member of the ONR.

502. Part 2 of the Schedule makes minor and consequential amendments to other legislation. Part 2 restates sections 1, 3 to 6 and 22 of the Nuclear Installations Act 1965, and in doing so incorporates changes to various nuclear safety functions of the Health and Safety Executive under those sections to the ONR. The replacement text restates the terms of the Act. In restating section 4, *paragraph 19* does not replicate the offence of failing to display licence conditions on a nuclear site as is no longer considered appropriate.

503. Parts 3 and 4 of Schedule 12 confer functions on the ONR in the same manner, but in relation to Security and Safeguards respectively.

504. Part 5 of the Schedule amends primary legislation to ensure that the ONR's functions are clearly defined from those of the Secretary of State or the Health and Safety Executive, particularly in respect of the ability of the ONR to be an enforcing authority under some health and safety legislation in Scotland and Wales. It also repeals the Radioactive Material (Road Transport) Act 1991, with the exception of section 1(1) (see *paragraph 63(1)* of Schedule 12). This is preserved because Section E5 of Part II of Schedule 5 to the Scotland Act 1998 uses the definition of 'radioactive material' in this provision.

505. In addition, *paragraph 71* of Schedule 12 ensures that the power to repeal or revoke nuclear safety provisions in section 37 of the Deregulation and Contracting Out Act 1994 is preserved. This power can only be exercised following consultation with the ONR. *Paragraph 81* of Schedule 12 confirms the ONR as a Category 2 responder under the Civil Contingencies Act 2004.

Section 117: Application of Part 3

506. This section sets out that Her Majesty may, by Order in Council, extend the application of Part 3 of this Act outside the United Kingdom. This power is necessary because some aspects of Part 3 (and nuclear regulations) will apply to acts and things done outside the United Kingdom as a consequence of nuclear material being transported outside of the United Kingdom. The power gives flexibility to amend the application of Part 3 to ensure that the provisions of this Part apply to persons, premises, activities, articles, substances or other matters outside the United Kingdom just as they would if they were within the United Kingdom.

Section 118: Review of Part 3

507. This section requires the Secretary of State to carry out a review of the provisions of Part 3 of the Act after the ONR has been in existence for five years. The conclusions of the review must be set out in report and laid before Parliament.

Part 4: Government Pipe-Line and Storage System

Section 119: Meaning of "government pipe-line and storage system"

508. This section defines, for the purposes of Part 4, what the term "the government pipe-line and storage system" means.

Section 120: Rights in relation to the government pipe-line and storage system

509. This section provides that the Secretary of State may maintain and use the government pipe-line and storage system, or any part of it, for any purpose for which it is suitable.

510. It also provides that the Secretary of State may inspect or survey the system or any land on or under which it is situated and may remove, replace or renew the system or any part of it. If the system, or any part of it, is removed or abandoned, he or she may restore the land.

Section 121: Right of entry

511. This section provides that for the purpose of exercising a right conferred by section 120, the Secretary of State may enter any land on or under which the government pipe-line and storage system is situated or any land held with that land ("the system land").

512. *Subsections (3) and (4)* provide that if the owner or occupier of the system land is entitled to exercise a right to pass over other land ("the access land"), the Secretary of State may exercise a corresponding right of access over that land for the purpose of accessing the system land.

513. Except in an emergency, the rights may be exercised only at a reasonable time and with the consent of the occupier of the land or under the Authority of a warrant.

514. The rights do not include a right to enter dwellings.

Section 122: Warrants for the purposes of section 121

515. This section provides for the issue of a warrant to authorise entry on to land in the exercise of a right conferred by section 121, if necessary using reasonable force.

516. A justice of the peace (or a sheriff in Scotland) may issue a warrant if satisfied that: at least seven days' notice has been given to the occupier of the land, the occupier cannot be found, or urgent action is required to prevent or limit serious damage to health or the environment; entry to the land has been or is likely to be refused (except where the occupier cannot be found); and, there are reasonable grounds for exercising the right.

517. It is an offence to intentionally obstruct the exercise of such a warrant and a person guilty of that offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Section 123: Registration of rights

518. This section provides that the rights conferred by *sections 120* (rights in relation to the government pipe-line and storage system), *121* (right of entry) and *125(1)* (right to transfer the government pipe-line and storage system) are not subject to any enactment requiring the registration or recording of interests in, charges over or other obligations affecting land but that they bind any person who is at any time the owner or occupier of the land.

519. However, *subsections (3)* and *(5)* provide that in England and Wales such rights are local land charges, and it will be the duty of the Secretary of State to apply for their registration and in Scotland the rights may be registered in the Land Register of Scotland or recorded in the Register of Sasines.

Section 124: Compensation

520. *Subsection (1)* provides that the Secretary of State must pay compensation to a person who proves that the value of a relevant interest in land to which that person is entitled is depreciated by the creation of rights by *sections 120* (rights in relation to the government pipe-line and storage system), *121* (right of entry) and *125* (right to transfer the government pipe-line and storage system).

521. *Subsection (2)* defines "relevant interest".

522. *Subsection (3)* provides that the amount of compensation is equal to the amount of the depreciation.

523. *Subsection (4)* provides that if a person proves loss by reason of damage to, or disturbance in the enjoyment of, any land or certain property as a result of the exercise of any right conferred by section*120* (rights in relation to the government pipe-line and storage system) or *121* (right of entry), the person on whose behalf the right was exercised must pay compensation in respect of that loss.

524. *Subsection (5)* provides that any dispute about entitlement to, or amount of, compensation is to be determined by the Upper Tribunal or, in Scotland, the Lands Tribunal for Scotland.

Section 125: Right to transfer the government pipe-line and storage system

525. This section provides that the Secretary of State may sell, lease or transfer the government pipe-line and storage system or any part of it and transfer any right or liability relating to the system or any part of it, subject to such conditions, if any, as he or she considers appropriate.

Section 126: Application of the Pipe-lines Act 1962

526. This section modifies the application of certain provisions of the Pipe-lines Act 1962 (c. 58) to the government pipe-line and storage system.

527. *Subsection (3)* only modifies the application of section 10 (provisions for securing that a pipe-line is so used as to reduce the necessity for construction of others) and section 36 (notification of abandonment, cesser of use and resumption of use of pipe-lines or lengths thereof) of the 1962 Act to any part of the system which is for the time being owned otherwise than by the Secretary of State.

528. *Subsection (4)* modifies section 40(2) of the 1962 Act (application of the electronic communications code).

529. *Subsection (5)* defines "GPSS works" for the purposes of *subsection* (4).

530. *Subsection (6)* modifies the effect of subsection (3) of section 45 of the 1962 Act (obligation to restore agricultural land) to the extent that anything done under or by virtue of Part 4 constitutes the execution of pipe-line works for the purposes of section 45.

Section 127: Rights apart from Part 4

531. *Subsection (1)* provides that nothing in Part 4 affects any other rights of the Secretary of State in relation to the government pipe-line and storage system.

532. *Subsection (2)* provides that the creation of rights to maintain and use, remove, replace or renew the government pipe-line and storage system or restore any land (section 120), of entry (section 121) and to transfer the system (section 125), is not reliant on whether a corresponding right was exercisable by the Secretary of State before the coming into force of the section.

Section 128: Repeals

533. This section repeals sections 12 (permanent power to maintain government oil pipe-lines), 13 (compensation in respect of government oil pipe-lines), 14 (registration of rights as to government oil pipe-lines) and 15 (supplementary provisions as to government oil pipe-lines) of the Requisitioned Land and War Works Act 1948 (c. 17) and section 12 of the Land Powers (Defence) Act 1958 (c. 30) (extension of provisions of Requisitioned Land and War Works Acts).

Section 129: Power to dissolve the Oil and Pipelines Agency by order

534. The Oil and Pipelines Agency is a statutory corporation set up for the purposes of exercising and performing functions assigned to it by the Oil and Pipelines Act 1985 (c.62). The primary function of the Agency is the management of the government pipe-line and storage system.

535. Because section 125 provides that the Secretary of State may sell, lease or transfer the government pipe-line and storage system or any part of it, *subsection (1)* provides that the Secretary of State may, by order, repeal the Oil and Pipelines Act 1985 and dissolve the Oil and Pipelines Agency.

536. *Subsection (2)* provides that if the Agency is dissolved under *subsection (1)*, the Secretary of State may make a scheme for the transfer to the Secretary of State of property, rights and liabilities (a "transfer scheme").

537. *Subsection (3)* provides that Schedule 13 makes further provision about such a transfer scheme.

538. *Paragraph 1* of Schedule 13 makes further provision for the effect of a transfer scheme and for what the things that may be transferred under a transfer scheme include. *Paragraph 2* provides that a transfer scheme may make certain kinds of provision.

539. Section 153 makes provision in relation to the modification of a transfer scheme and provides that a transfer scheme may make incidental, supplementary and consequential provision.

Section 130: Crown application: Part 4

540. This provides that Part 4 binds the Crown but that no contravention by the Crown of section 122(4) makes the Crown criminally liable.

Part 5: Strategy and Policy Statement

Section 131: Designation of statement

541. *Subsection (1)* gives the Secretary of State a power to designate a strategy and policy statement. *Subsection (2)* provides that a strategy and policy statement will comprise the following parts:

- "strategic priorities" which are the strategic priorities, and other main considerations, of Her Majesty's government in formulating its energy policy for Great Britain (including offshore areas as described in *subsection (4)*);
- "policy outcomes" which are particular outcomes to be achieved as a result of the implementation of that policy; and
- the roles and responsibilities of persons involved in implementing that policy or who have other functions that are affected by it. This could include, amongst others, the Secretary of State and the Authority.

542. The Secretary of State must publish any strategy and policy statement (either as originally designated or as amended) in such a manner as he or she considers appropriate (*subsection (3)*).

543. *Subsection (5)* provides definitions of terms used in Part 5.

Section 132: Duties in relation to a statement

544. This section provides that the Authority has the duty to "have regard to" the strategic priorities in the statement (*subsection (1)*). *Subsections (2)* and *(3)* confer a duty on both the Secretary of State and the Authority to carry out their regulatory functions in a manner which the Secretary of State or the Authority consider is best calculated to further the delivery of the policy outcomes in the statement, subject to the application of the principal objective duty (as defined in *subsection (6)* – essentially, the duty to carry out functions in the manner best calculated to protect the interests of existing and future consumers, wherever appropriate by promoting competition).

545. *Subsections (4)*, *(5)* and *(9)* explain what is meant by "regulatory functions". Regulatory functions can be found in a number of places. For example, Part 1 of the Gas Act 1986 and Part 1 of the Electricity Act 1989, various provisions in the Energy Acts 2004, 2008, 2010 and 2011 as well as other provisions in this legislation and any future functions to which the principal objectives and statutory duties in the Gas Act 1986 and Electricity Act 1989 will be applied.

546. The Authority also has a duty to give notice to the Secretary of State if at any time it concludes that a policy outcome is not realistically achievable (*subsection (7)*). *Subsection (8)* sets out what information this notice must include, that is the grounds on which the Authority reached its conclusion and what, if anything, the Authority is doing or planning to do to further the delivery of that outcome as far as is reasonably practicable.

Section 133: Exceptions from section 132 duties

547. This details some specific functions where the duties in section 132(1) and (2) will not apply. It mirrors some exceptions from application of the principal objective and statutory duties for regulation of the Great Britain energy sector in section 4B of the Gas Act 1986 and section 3D of the Electricity Act 1989.

548. In particular, *subsection (1)* provides that the duties in section 132(1) and (2) do not apply to certain consenting functions of the Secretary of State (for example, consent for construction of a generating station under section 36 of the Electricity Act 1989).

549. *Subsection (2)* provides that the duties do not apply to the Authority when exercising functions of determining disputes or competition functions which are held concurrently with the Office of Fair Trading.

550. *Subsection (3)* provides that the new duties in section 132(1) and (2) will not affect any obligation on the Authority or the Secretary of State to perform or comply with any other duty or requirement.

Section 134: Review

551. *Subsection (1)* places a duty on the Secretary of State to review the statement every 5 years and *subsection (3)* provides that the review must take place as soon as reasonably practicable after the end of each 5 year period. For the first strategy and policy statement, the 5 year period will begin to run from the designation of the statement (*subsection (2)(a)*). For subsequent strategy and policy statements, *subsection (2)(b)* provides that the trigger point for the 5 year period beginning to run will depend on when the review of the previous statement took place (as defined in *subsection (11)* – see below).

552. *Subsection (4)* sets out triggers for when the Secretary of State may review the statement before the end of the 5 year period. These are:

- following a Parliamentary general election;
- after the Authority has given notice to the Secretary of State (under section 132(7)) that it is not realistically achievable to meet a policy outcome in the statement;
- the Government's energy policy has significantly changed (a significant change being one that was not anticipated at the relevant time, as defined in *subsections (2)* and *(11)*, but which would have led to the statement being different in a material way if it had been anticipated at a particular time (*subsection (5)*), or
- Parliament did not give approval to an amended statement following the last review (that is, following the last review an amended statement was laid before Parliament but no approval was given so it was not designated (*subsection (12)*).

553. *Subsection (6)* explains that following a review the Secretary of State can amend the statement, leave it unchanged or withdraw it. In all cases consultation with the persons listed in *subsection (10)* will be required.

554. Both an entirely new statement or a change to part of the previous statement constitute an amendment (*subsection (6)(a)*) but changes to the statement to correct clerical or typographical errors are not amendments for these purposes (*subsection (8)*).

555. If the decision is taken to amend the statement, this will only take effect if the Secretary of State has followed the procedural requirements in section 135 (including securing Parliamentary approval under section 135(8)) and designated the amended statement as the strategy and policy statement (*subsection (7)*). At the point of designation, the previous strategy and policy statement will cease to have effect (*subsection (9)*). The 5 year period for review begins on the date of designation of the amended statement (*subsection (11)(a)(i)*).

556. However, if Parliament does not approve the amended statement under section 135(8), the existing statement will remain in force and the 5 year period for review begins to run from the time when the statement was laid before Parliament for approval (*subsection (11)(a)(ii)*). In this situation, the Secretary of State does have the power to review the statement before the end of the 5 year period if he or she wishes (as set out in *subsection (4)(d)*).

557. If the decision is taken to leave the statement as it is, the 5 year period for review begins when that decision is taken (*subsection (11)(b)*).

Section 135: Procedural requirements

558. This sets out the procedural requirements for preparing and designating a statement (including any amendments to a statement) (*subsections (1) and (2)*). Preparation of a draft statement may begin before the passing of this Act (*subsection (9)*). The Secretary of State must:

- prepare a draft and consult the Authority, Scottish Ministers and Welsh Ministers on it ("first consultation") (*subsections (3) and (4)*);
- revise the draft in light of responses to the first consultation and publish a revised draft for a wider consultation (that is, those mentioned above and any other persons that the Secretary of State considers appropriate) ("second consultation") (*subsection (5)*);
- amend the revised draft in light of responses to the second consultation and prepare a report summarising the second consultation responses and any amendments made as a result (*subsection (6)*), and
- lay the report and the final draft statement before Parliament, to be passed by affirmative resolution (*subsections (7)* and *(8)*).

Section 136: Principal objective and general duties in preparation of statement

559. *Subsection* (1) provides that the principal objective and general duties found in sections 4AA to 4B of the Gas Act 1986 apply to the Secretary of State when determining the policy outcomes (determination of which is defined as the "relevant function" in *subsection (3)*) for any strategy and policy statement (be it the first statement or subsequent amended statements).

560. *Subsection (2)* makes identical provision for the principal objective and general duties in sections 3A to 3D of the Electricity Act 1989.

Section 137: Reporting requirements

561. This section amends the Utilities Act 2000 to build on the Authority's current reporting requirements. *Subsection (2)* adds a new section 4A to the Utilities Act 2000.

562. *Subsections (1)* to *(5)* of section 4A require the Authority to publish certain information in relation to the strategy and policy statement. This information is specified in section 4A(3) and includes strategy and proposed actions for how it will further delivery of the policy outcomes, both in the forthcoming year and beyond.

563. The provisions give the Authority some flexibility to publish the information in the way which best fits with its existing reporting cycle, no matter when a strategy and policy statement is published. Section 4A(1) ensures that, as soon as reasonably practicable after designation of a strategy and policy statement, the Authority publishes a document containing the required information. Section 4A(4) gives the Authority discretion to publish the information in its next forward work programme (which it is obliged to publish under section 4 of the Utilities Act 2000) if it is not reasonably practicable to publish it in an earlier document.

564. Section 4A(2) ensures that the Authority publishes the same information (updated) in each forward work programme, unless the Secretary of State has given notice that the statement's designation has been, or is expected to be, withdrawn before the beginning of the financial year (section 4A(6)). Section 4A(5) gives the Authority discretion to publish the information in a separate document in relation to the first financial year after designation, if it is not reasonably practicable to include it in a forward work programme.

565. Section 4A(7) ensures that the same procedural requirements apply to publication of a document containing the required information as apply to a forward work programme. Section 4A(8) defines certain terms for the purpose of the section.

566. *Subsection (3)* amends section 5 of the Utilities Act 2000 setting out further information related to the strategy and policy statement that must be included in the Authority's annual report. The information is set out in *subsections (2A)* and *(2B)* of section5 and includes information which relates to the strategy and proposed actions which will be set out in the forward work programme as identified above and an explanation of any failure to take those actions. Section 5(2C) defines certain terms for the purposes of the section.

Section 138: Consequential provision

567. *Subsection (1)* repeals the provisions under which the existing social and environmental guidance is issued. *Subsections (2)* and *(3)* amend the Gas Act 1986 and the Electricity Act 1989 so as to ensure that the new duty is subject only to the principal objective duty. *Subsections (4)* and *(5)* amend the Gas Act 1986 and the Electricity Act 1989 to take account of the repeal of the Social and Environmental Guidance and the designation of a strategy and policy statement.

Part 6: Consumer Protection and Miscellaneous

Chapter 1: Consumer Protection

Section 139: Power to modify energy supply licences: domestic supply contracts

568. This section provides the Secretary of State with powers to amend the licence conditions for suppliers of gas and electricity, with regard to the tariffs they offer domestic customers and the information they must provide. The Authority announced in March 2013 a detailed package of measures to simplify the tariff market and encourage greater consumer engagement, thereby improving competition. This section and its supporting sections 140 and 141 provide a legal backup in case the Authority's work is frustrated or delayed, to ensure that consumers are on the cheapest tariff that meets their preferences The section allows the Secretary of State to modify licences so as to:

a) require a supplier to move customers on poor value "closed" tariffs to the cheapest standard variable rate tariff for them (closed tariffs are tariffs which are closed to new customers);

b) restrict the number of tariffs each supplier can offer, to simplify them so that the market is more manageable for consumers;

c) require suppliers to offer particular types of tariff, ensuring that one or more are easily comparable across the market;

d) require suppliers to provide information to enable customers to easily assess and compare tariffs, including:

- identifying their cheapest tariff for an individual consumer,
- providing a standard metric for each of their tariffs for comparison with other suppliers and
- providing information in a format that would allow it to be easily used with electronic devices such as smartphones; and

e) require suppliers to provide information to domestic consumers about energy suppliers' costs or profits which relate to providing gas and electricity to such customers and how those costs and profits are reflected in domestic energy bills.

569. *Subsection (2)* sets out the kinds of provisions which the Secretary of State can make under the licence modification power at *subsection (1)*. *Subsection (3)* requires that any limit on the number of tariffs which the Secretary of State may set must be greater than the number of tariffs suppliers are required to provide (ensuring that suppliers have the freedom to choose at least one tariff). *Subsection (4)* enables the Secretary of State to require specified information to be provided to consumers and also to stipulate that the Secretary of State may specify the type and format of information that suppliers can be required to provide. *Subsections (5)* and *(6)* provides certain incidental powers, for example, to allow the Secretary of State to make provision for determining when a licence holder shall be regarded as 'offering to supply' energy on a particular tariff, when supplies of energy shall be regarded as being on the same or different tariffs for the purpose of the modification power, how particular tariffs or terms are to be identified, and the types of assumptions which should be applied when applying a licence modification. In addition, *subsection (7)* also allows the Secretary of State to except specified cases or circumstances from the application of the licence modifications. *Subsection (8)* defines the terms used in the section and *subsection (9)* provides that prices or charges cannot be set by the Secretary of State. *Subsection (10)* sets out in *(a)* and *(b)* the meaning of supplying gas or electricity 'on a tariff' and the meaning of a customer being 'on a particular domestic tariff' for the purposes of the section (in particular *subsection (2)(e)*). *Paragraph (c)* sets out what it means for a supplier to 'adopt' a particular tariff. *Subsection (11)* allows the Secretary of State to specify the types of terms of a tariff which are 'the principal terms' of a domestic supply contract (relevant in particular to the definitions of "domestic tariff" and "standard domestic tariff"). *Subsection (12)* sets out the ancillary powers applicable to *subsection (11)* setting out for example that the Secretary of State may make different provisions for different domestic supply contracts and may make provision subject to exception. *Subsection (13)* requires that an order under *subsection (11)* must be made by way of statutory instrument. *Subsection (14)* sets out that the order making power in *subsection (11)* is subject to the negative resolution procedure.

Section 140: Section 139: Procedures etc

570. This section requires the Secretary of State to undertake a consultation ahead of making any licence modifications under section 139 and ensures that any such modifications are carried forward into subsequent licences granted by the Authority. The section also sets out the process for the negative resolution procedure to be followed when exercising the modification powers. It also applies a sunset provision to the powers.

Section 141: General duties of Secretary of State

571. This section ensures that the principal objective and the general duties of the Secretary of State under existing legislation also apply to the functions given to the Secretary of State under sections 139 or 140.

Section 142: Consequential provision

572. This section effects consequential amendments to existing Acts so that they are consistent with sections 139 and 140. It also repeals existing legislation allowing the Secretary of State to require suppliers to provide information on their cheapest tariffs to customers, as this has been superseded by section 139.

Section 143: Powers to alter activities requiring licence: activities related to supply contracts

573. This section extends the scope of energy-related activities that can be made subject to the licence regime governed by the Authority. The purpose of this provision is to enable the Authority to regulate third-party intermediaries in the energy market (or "TPIs"), such as switching websites, should this be necessary.

Consumer redress orders

Section 144: Consumer redress orders

574. This section introduces Schedule 14 which enables the Authority to impose requirements on a regulated person to pay compensation to consumers of gas or electricity if the person has contravened certain conditions or requirements and the contravention has caused loss, damage or inconvenience. Alternatively the Authority may impose a requirement to provide other means of redress, for example a requirement to issue a statement setting out the contravention and its consequences.

Schedule 14: Consumer redress orders

575. This Schedule amends the Gas Act 1986 and the Electricity Act 1989 so as to provide the Authority with a power to make a "consumer redress order". The Authority may make such an order if a regulated person such as an energy supplier breaches a relevant condition or requirement of its operating licence and that breach causes loss, damage or inconvenience to a consumer. Where it is appropriate to make a consumer redress order it might, for example, impose a requirement on the regulated person to pay compensation to the consumer for the loss or damage which the regulated person has caused to the consumer. The order may also impose such requirements as the Authority thinks is necessary to remedy the consequences of a contravention. *Part 1* of this Schedule makes amendments to the Gas Act 1986 whilst *Part 2* makes equivalent amendments to the Electricity Act 1989 so that a power to make a consumer redress order applies in the same way to breaches by gas companies or electricity companies. The following describes the effect of the amendments being made to the Gas Act 1986 but the description is equally applicable to the equivalent amendments made to the Electricity Act 1989 by *Part 2* of this Schedule.

Schedule 14, Part 1 – Gas Consumers

576. *Paragraph 1* introduces the amendments which are made to the Gas Act 1986.

577. *Paragraph 2* inserts after existing section 30F of the Gas Act 1986 new sections 30G, 30H, 30J, 30K, 30L, 30M, 30N and 30O. The effect of these new provisions is described below.

578. *Paragraphs (3) to (7)* make consequential amendments to the Gas Act 1986 which are required by the insertion of the provisions described above.

579. *Paragraph (8)* provides for an order that has been made under section 30A(8) of the Gas Act 1986 and which specifies how turnover is to be determined for the purposes of calculating the maximum penalty that may be imposed on a regulated person to be regarded as having been made under section 30O(5) (which replaces the power in section 30A(8)). This provision also makes clear that an order which has already been made can be used for the purposes of determining the maximum amount of compensation that is payable by a regulated person under section 30G and applies in the same way as it applies to determining the maximum amount of penalty that is payable under section 30A.

New section 30G: Consumer redress orders

580. *Subsection (1)* sets out the circumstances in which the Authority may make a consumer redress order. The Authority must be satisfied that a "regulated person" has contravened a relevant condition or requirement of its licence and as a result of that contravention one or more consumers have suffered loss or damage or been caused inconvenience.

581. *Subsection (2)* describes the requirements which the Authority may impose on a regulated person in a consumer redress order. A consumer redress order may require a regulated person to do such things as appear to the Authority to be necessary for

the purpose of remedying the consequences of the contravention or preventing a contravention of the same or similar kind from being repeated.

582. *Subsection (3)* specifies some things which must be included in a consumer redress order. For example, the order must specify the regulated person to whom the order applies, the contravention in respect of which the order is made and the requirements imposed by the order.

583. *Subsection (4)* imposes an obligation on the Authority to serve a copy of the order on the regulated person to whom it applies and serve a copy on affected consumers. Where the number of consumers affected is large the Authority can choose to publish a copy of the order in a way which it believes will bring the order to the attention of affected consumers, see *subsection (4)(b)(ii)*.

584. *Subsection (5)* prevents a requirement imposed on a regulated person having to be complied with earlier than the end of the period of seven days from the date the order is served on that person. This provision builds in a minimum period within which a regulated person will have to consider the requirements in the order and to consider how it will comply with those requirements.

585. *Subsection (8)* defines "affected consumers", "consumers" and "consumer redress order".

New section 30H: Remedial action under a consumer redress order

586. *Subsection (1)* provides a non-exhaustive list of things that a regulated person may be required to do by a consumer redress order. For example, a consumer redress order may require a regulated person to pay compensation to affected consumers, prepare and distribute a statement setting out the contravention and its consequences and may impose a requirement on a regulated person to terminate or vary any contract with the affected consumers. As an example, it may be necessary to require a regulated person to terminate or vary a contract if the terms of the contract are contraventions of the regulated person's supply licence or are the cause of the loss which a consumer has sustained.

587. *Subsection (2)* sets out what must be included in the order if the remedial action includes the payment of compensation.

588. *Subsections (3)* and *(4)* explain what the order must specify if the remedial action includes the preparation and distribution of a statement and how the statement might be distributed.

589. *Subsection (5)* sets out what the order should contain if the remedial action includes the termination or variation of a contract with an affected consumer. *Subsection (5)(b)* makes it clear that a requirement to terminate or vary a contract with a consumer only has effect if, and to the extent that, the affected consumer consents to the termination or variation of the contract.

New section 30I: Other procedural requirements in relation to consumer orders

590. This section sets out the procedural requirements relating to the making, varying or revoking of a consumer redress order with which the Authority must comply.

591. *Subsection (1)* requires the Authority to give notice if it proposes to make a consumer redress order. *Subsection (2)* sets out the information which a notice must include. For example, the notice must set out the regulated person to whom it will apply, the contravention in respect of which the order is to be made, the consumers affected or description of such consumers and the requirements to be imposed by the order and the timeframe within which representations or objections with respect to the proposed order may be made. The Authority must consider any representations or objections which are made and not withdrawn.

592. *Subsection (3)* describes the procedural requirements which apply if the Authority decides to vary a proposal to make a consumer redress order. In particular, the Authority must give reasons for the proposed variation and must leave time for representations or objections to be made.

593. *Subsection (4)* sets out the process by which the Authority may revoke a consumer redress order. The Authority cannot revoke a consumer redress order until it has given notice stating its reasons for proposing the revocation of the order and considering any representations or objections made for or against the proposal to revoke the order.

594. *Subsection (5)* describes how a notice which is required under this section must be effected. It requires a notice to be served on a regulated person and on each affected consumer. However, as an alternative to serving a notice on each affected consumer the Authority can give affected consumers notice by publishing the notice in such manner as it considers appropriate for the purpose of bringing the matters in the notice to the attention of affected consumers.

595. *Subsection (6)* defines the "relevant date" in relation to a notice under this section.

New section 30J: Statement of policy with respect to consumer redress orders

596. *Subsection (1)* imposes a duty on the Authority to prepare and publish a statement of policy in respect of making consumer redress orders and the determination of the requirements to be imposed by the order. The statement of policy will help the Authority set out some of the circumstances in which it may decide to make a consumer redress order and also describe how it will decide what type of requirements to include within consumer redress orders for the purpose of remedying the consequences of a contravention.

597. *Subsection (2)* imposes a duty on the Authority to have regard to its current statement of policy when deciding whether to make a consumer redress order and in determining the requirements to be imposed by the order. *Subsection (3)* enables the Authority to revise its statement of policy but if it does it is required to publish the revised statement.

598. *Subsection (4)* allows the Authority to publish the statement of policy in a manner the Authority considers appropriate to bring it to the attention of those likely to be affected.

599. *Subsection (5)* imposes a duty on the Authority to consult such persons as it considers appropriate when preparing or revising its statement of policy.

New section 30K: Time limits for making consumer redress orders

600. By virtue of *subsection (1)*, a consumer redress order can be made no later than five years from the date of the contravention in cases where no final or provisional order has been made by the Authority. (A final or provisional order is an enforcement order, which the Authority can make under section 28 of the Gas Act 1986 or 25 of the Electricity Act 1989). *Subsection (2)* provides that the five year period does not apply if a notice under section 30I has been served on a regulated person or if the Authority is investigating a possible contravention and as part of that investigation has served a notice on the regulated person under section 38 of the Gas Act 1986. In both of these type of case a consumer redress order can be made even though it will be made five years after the date of the contravention.

601. *Subsection (3)* sets out when a consumer redress order can be made in cases where a final or provisional order has been made in respect of a contravention. A consumer redress order can be made within three months of a final order being made or a provisional order being confirmed or within six months if a provisional order was made but not confirmed.

New section 30L: Enforcement of consumer redress orders

602. *Subsection (1)* enables the Authority to enforce a consumer redress order. The Authority can bring civil proceedings for an injunction or interdict, for specific performance or for any other appropriate remedy or relief.

603. *Subsection (3)* makes the obligation on a regulated person to comply with a consumer redress order a duty which is owed to any person who is affected by a contravention of the order. This provision enables a consumer, in conjunction with *subsection (4)*, to enforce a consumer redress order by bringing civil proceedings against the regulated person and seeking any appropriate remedy or relief.

604. *Subsection (5)*, by regarding the duty owed to a consumer under *subsection (4)* as a contractual duty, enables a consumer to enforce a consumer redress order and as part of that claim to seek, for example, damages in respect of any loss or damage which a regulated person has caused the consumer as a result of non-compliance with the consumer redress order.

New section 30M: Appeals against consumer redress orders

605. *Subsection (1)* enables a regulated person in respect of whom a consumer redress order is made to appeal against it if the person is aggrieved by the making of the order or aggrieved by any requirement imposed by the order. An appeal is made to a court and must by virtue of *subsection (2)* be made within 42 days from the date upon which a regulated person is served a consumer redress order.

606. *Subsection (3)* confers powers on a court hearing an appeal to quash the consumer redress order or for it to vary any provision in the order in such manner as the court thinks fit. *Subsection (4)* limits a court's power under *subsection (3)* to circumstances where the court is satisfied that one or more of the specified grounds apply. The grounds are that the making of the order was not within the power of the Authority under section 30G, that any of the procedural requirements under section 30G(4) and 30I have not been complied with and that has resulted in substantial prejudice being caused to the interests of the regulated person, or that it was unreasonable of the Authority to require something to be done.

607. Where an appeal is lodged under this section, *subsection (5)* suspends the need to comply with a consumer redress order until the application to appeal has been determined.

608. *Subsections (6)* and *(7)* enable a court to award an amount of interest to be paid on the amount of compensation which it determines is appropriate. The amount of interest that should be paid and the date from which it should be paid can be whatever the court considers is just and equitable.

609. *Subsection (8)* prevents the validity of a consumer redress order being challenged except in accordance with this section.

New section 30N: Consumer redress orders: miscellaneous

610. *Subsection (1)* sets out the rate of interest which will apply in a case where a regulated person has not paid compensation on the date by which that person was required to do so by a consumer redress order.

611. *Subsection (2)* prohibits the Authority from making a consumer redress order if it is satisfied that proceeding under the Competition Act 1998 is more appropriate.

612. *Subsection (3)* preserves the Authority's power to impose a penalty under section 30A of the Gas Act 1986 when making a consumer redress order. Therefore, the power to make a consumer redress order does not prevent the Authority from also imposing a penalty in respect of the same contravention.

613. *Subsection (4)* prevents a consumer redress order from being made in respect of a contravention which takes place before the Schedule which makes the necessary changes to the Gas Act 1986 is commenced.

New section 30O: Maximum amount of penalty or compensation

614. *Subsection (1)* sets the maximum amount of penalty that may be imposed on a regulated person in respect of a contravention at 10 per cent of that person's turnover. *Subsection (2)* sets the maximum amount of compensation that may be imposed on a regulated person at the same level of a regulated person's turnover. *Subsection* (3) engages *subsection (4)* if both a penalty and compensation are to be paid by a regulated person. *Subsection (4)* limits the total amount of a penalty to be paid and the total amount of compensation to be paid when combined to 10 per cent of that regulated person's turnover.

615. *Subsection (5)* allows the Secretary of State to determine by order how a person's turnover is to be determined for the purpose of this section.

616. *Subsection (7)* requires an order under *subsection (5)* to be laid before and approved by a resolution of each House of Parliament before it may be made.

617. *Subsection (8)* defines "compensation" and "penalty".

Schedule 14, Part 2 – Electricity Consumers

618. Part 2 makes equivalent changes to the Electricity Act 1989 to introduce provisions materially identical to those described above. After section 27F of the Electricity Act 1989, sections 27G, 27H, 27I, 27J, 27K, 27L, 27M, 27N, 27O are inserted. Each of these new sections have the same effect as the equivalent provisions inserted in the Gas Act 1986. For example, the effect of section 27G is the same as that discussed for section 30G, the effect of 27H is the same as that discussed for section 30H and so on.

Section 145: Fuel Poverty

619. The purpose of this section is to place a duty on the Secretary of State to set a new objective for addressing fuel poverty in England, replacing the current provisions of section 2 of the Warm Homes and Energy Conservation Act 2000 (insofar as they apply to England).

620. Section 145 provides a new section 1A which removes the current fuel poverty target for England from the Warm Homes and Energy Conservation Act 2000 and replaces it with a duty on the Secretary of State to set an objective for addressing the situation of persons living in fuel poverty through secondary legislation. The section requires the form of that objective and a target date for achieving it to be specified in secondary legislation, which will be subject to an affirmative resolution procedure.

621. The section provides a new section 1B pursuant to which the Secretary of State is required to prepare and publish a strategy for achieving the new objective that is specified in secondary legislation.

622. If the statutory objective or target date are amended the Secretary of State must revise and republish the strategy where he or she considers the amendments require it.

623. Section 145 removes the requirement to consult with the National Consumer Council in relation to the preparation, publication and revision of the strategy as this body no longer exists.

624. The amendments to the Warm Homes and Energy Conservation Act 2000 will only apply to England. The existing provisions of the Act will continue to apply to Wales.

Feed-in tariffs

Section 146: Feed-in tariffs

625. The purpose of this section is to confer a power on the Secretary of State to increase the specified maximum capacity of installations eligible for the Feed-in Tariffs (FITs) scheme from 5 megawatts to 10 megawatts.

626. The powers under which the FITs scheme is established are set out in sections 41 to 43 of the Energy Act 2008. The powers can be used in relation to small-scale, low-carbon generation of electricity. Such generation is defined as the use of plant with a capacity which does not exceed the maximum capacity specified by the Secretary of State by order. As currently defined, in section 41(4) of the Energy Act 2008, that capacity must not exceed 5 megawatts. This section increases this to 10 megawatts. The Secretary of State will therefore be able to specify a maximum capacity up to that figure.

Offshore Transmission

Section 147: Offshore transmission systems

627. This section amends section 4 of the Electricity Act 1989 to create an exception to the prohibition of participating in the transmission of electricity without a licence for a person who participates in offshore transmission activity during a commissioning period in certain circumstances.

628. *Subsection (2)* of the section makes section 4(3A) of the Electricity Act 1989 subject to a new section 6F which, together with new sections 6G and 6H, are inserted by *subsection (3)*.

629. Section 6F sets out the circumstances in which the exception applies. Subsection (1) of new section 6F sets out that a person is not to be regarded as participating in the transmission of electricity for the purposes of Part 1 of the Electricity Act 1989 where four conditions are met. Subsections (2) to (5) of new section 6F set out these four conditions which must be met if the prohibition in section 4 is not to apply. Subsection (6) sets out that a person can still benefit from the exception even if they are not the developer in relation to the tender exercise. Subsection (7) provides for where the identity of the developer in relation to a tender exercise changes in line with the expansion on that definition in section 6D(4) of the Electricity Act 1989. In conjunction with subsection (5)(b), this enables a person to benefit from the exception where the transmission system and relevant generating station are transferred to the same or different corporate group(s), regardless of whether the transfer is by sale of the generation and transmission companies (a share sale) or sale of the generation and transmission assets (an asset sale). Subsection (8) defines particular concepts which are described in the new section 6F. This subsection adopts the definition of the term "associated" in paragraph 37 of Schedule 2A of the Electricity Act 1989, given that the exception to the prohibition in section 4 can also apply where the transmission system is being or has been constructed or installed by or on behalf of, or by or on behalf of a combination of, a body corporate that is or was associated with either the person identified by subsection (5)(a) or a previous developer.

630. New section 6G(1) defines the concept of "commissioning period" - the period for which the exception applies. Subsection (1)(a) ensures that the exception to the prohibition of transmission without a licence applies before a completion notice is issued in respect of the transmission system. Subsection (1)(b) sets the period after the issuing of a completion notice to 18 months starting with the day on which the completion notice is given. Subsection (2) defines the concept of a "completion notice", which appears in subsection (1). Subsection (3) enables the Secretary of State to make an order to amend the 18 month period to 12 months and thereby reduce the period of the exception by six months. Subsection (4) provides that the power may only be exercised between two and five years after this section comes into force. Subsection (5)

provides that an order made under subsection (3) will not apply to transmission systems which have qualified into a tender process on or before the day on which such an order is made (with the effect that the 18 month period will continue to apply in respect of such systems). Subsection (6) defines terms used in new section 6G.

631. Subsections (1) and (2) of new section 6H give the Authority the power to modify any codes maintained under a transmission or distribution licence and agreements associated with such codes in order to implement or facilitate the operation of section 6F. For example, the power may be required to modify codes or agreements so as to make provision for the commissioning of transmission assets by the generator and the process by which a completion notice is issued following such commissioning. The power may also be exercised to make changes relating to the ongoing operation of the transmission assets between issue of the completion notice and the end of the commissioning period as defined in section 6G. Subsection (3), in conjunction with subsection (2), of the new section 6H defines the scope of the Authority's power. Subsection (4) requires the Authority to consult before exercising the power, and subsection (5) relates to the timing of that consultation. Subsection (6) requires the Authority to publish a notice of reasons after it exercises its power, and subsection (7) relates to the manner of publication. Subsection (8) limits the period during which the Authority may exercise its power under this section to 7 years from the date on which this section comes into force.

632. Subsection (4) of the section amends section 64(1B) of the Electricity Act 1989 so that references in Part 1 of that Act to participation, in relation to the transmission of electricity, are also to be construed in accordance with new section 6F.

Fees

Section 148: Fees for services provided for energy resilience purposes

633. This section gives the Secretary of State the power to charge fees for services provided in the exercise of energy resilience powers in Great Britain.

634. *Subsection (2)* of the section defines "energy resilience powers" as powers exercised by the Secretary of State for the purposes of, or in connection with, preventing or minimising disruption to the energy sector. This includes preventing or minimising disruption to the supply of fuel.

635. *Subsection (3)* of the section provides that the level of the relevant fees may be set either by regulations or, if no such regulations are made, by a direction given by the Secretary of State. The Secretary of State may provide that the fees are of different amounts in different circumstances (*subsection (4)*).

636. Any regulations setting the level of fees will be subject to the negative resolution procedure (*subsection (5)*), while if the Secretary of State sets the level of fee by direction, a statement of such fees must be laid before Parliament (*subsection (6)*).

Nuclear decommissioning costs

Section 149: Fees in respect of decommissioning and clean-up of nuclear sites

637. This section inserts a new section 45A and amends sections 46, 49 and 66 of the Energy Act 2008. The new provisions extend the circumstances under which the Secretary of State: can recover the costs incurred in relation to considering: (i) any proposals relating to a funded decommissioning programme; (ii) any proposals to modify a funded decommissioning programme; (iii) agreements made under section 46(3A); and (iii) agreements under section 66.

638. *Subsection (2)* of the section inserts a new section 45A into the Act. *Subsections (1)* and *(2)* of the new provision enables the Secretary of State to recover from an operator the

costs incurred in considering any proposal for a funded decommissioning programme put forward by an operator but before its formal submission.

639. *Subsection (3)* inserts new subsections (3H) and (3I) into section 46 of the Energy Act 2008. The new subsections enable the Secretary of State to recover the costs incurred in (i) considering any agreement which he or she wishes to make under section 46(3A); (ii) any amendment to any such agreement or (iii) any proposal to make any such agreement or to make an amendment to any such agreement.

640. *Subsection (4)* amends the existing power in section 49(3) and (4) of the Energy Act 2008. The amendment enables the Secretary of State to recover the costs incurred in considering a proposal to modify a funded decommissioning programme at a stage before it is formally submitted to the Secretary of State for consideration.

641. *Subsection (5)* inserts new subsections (3A) and (3B) into section 66. These provisions enable the Secretary of State to make regulations to recover the costs incurred by the Secretary of State when considering an agreement to which section 66 refers.

Section 150: Smoke and carbon monoxide alarms

642. This section gives the Secretary of State powers to make regulations which introduce a requirement on landlords of residential properties to install smoke and/or carbon monoxide alarms in properties they rent out and to make checks to ensure that any such alarms remain in proper working order (*subsection (1)*). Alarms must meet the standard (if any) specified in the regulations *(subsection (2)).*

643. *Subsections (3)* to *(5)* enable the Secretary of State to make provision in the regulations about the enforcement of any duty imposed by the regulations, provision requiring a landlord who contravenes any such duty to pay a financial penalty and provision about procedural matters relating to the imposition of penalties.

644. The regulations may make different provision for different circumstances or for different purposes and may make provision subject to exceptions *(subsection (6)).* The regulations may also make consequential amendments to existing legislation.

645. *Subsection (9)* applies the affirmative procedure to any regulations made under section 150. *Subsection (10)* defines terms used in the section but this is subject to subsection (3)(a) which enables the Secretary of State to make provision in the regulations about the interpretation of terms used in *subsections (1)* and *(2).*

Review

Section 151: Review of certain provisions of Part 6

646. This section requires the Secretary of State to carry out a review of the consumer redress and decommissioning fees provisions in Part 6, as soon as reasonably practicable after five years after they come into force, and report his or her conclusions to Parliament. In the report, the Secretary of State must set out the objectives of the provisions he or she is reviewing, the extent to which the objectives have been achieved, whether the objectives are still appropriate and, if they are, the extent to which there might be other ways of achieving them which impose less regulation.

Part 7: Final

Section 152: Interpretation of Act

647. This section defines terms used throughout the Act.

Section 153: Transfer schemes

648. This section makes provision in respect of powers in the Act to make transfer schemes. Transfer schemes are used to transfer property, rights and liabilities from one person to another in an efficient and coordinated manner. The Act contains several transfer scheme powers: Schedule 1 concerns transfers from one CFD counterparty to another, *paragraph 16* of Schedule 2 concerns transfers relating to investment contracts, Schedule 3 concerns the transfer of EMR functions from the national system operator to a different delivery body, Schedule 11 concerns transfers to the Office for Nuclear Regulation and Schedule 13 concerns transfers relating to the Oil and Pipelines Agency.

649. *Subsections (2)* to *(4)* enable the Secretary of State to modify transfer schemes. Modifications made after a transfer scheme has taken effect may only be made by agreement with those 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.

650. *Subsection (5)* sets out the full scope of transfer scheme powers.

Section 154: Financial provisions

651. This section makes provision about expenditure, or increase in expenditure, as a result of the Act. *Subsection (2)* is a spending authorisation and contains specific examples of where the Secretary of State may incur expenditure:

- by setting up a CFD counterparty;
- by making payments or providing financial assistance (grants, loans, guarantees, indemnities, etc) to a CFD counterparty;
- in obtaining advice and assistance in respect of CFD and capacity market arrangements;
- by making payments or providing financial assistance to a capacity market settlement body;
- by making payments or providing financial assistance to the national system operator , a person or body on whom a function is conferred by section 35 or an alternative delivery body in connection with EMR functions (see section 46) i.e. for the CFD or capacity market regimes or for an electricity demand reduction regime.

652. *Subsection (3)* allows the Secretary of State to make payments and financial assistance subject to conditions, including repayment conditions.

Section 155: Extent

653. This section sets out the territorial extent of the provisions in the Act. Most provisions in the Act extend to England and Wales, and Scotland (see *subsection (1)*).

654. *Subsection (2)* provides that Part 1 (decarbonisation), Chapters 1, 2, 4, and 8 of Part 2 (electricity market reform), section 56 (transition to certificate purchase scheme), section 63 (exemption from liability in damages), much of Part 3 (nuclear regulation) and Part 7 (final provisions) also extend to Northern Ireland.

655. *Subsection (3)* provides that section 55(4) (which enables powers relating to closure of support under the renewables obligation in Northern Ireland to have effect there) extends only to Northern Ireland. *Subsection (4)* states that sections 145 (fuel poverty) and 150 (smoke and carbon monoxide alarms) extend to England and Wales only. *Subsection (5)* provides that section 149 (fees in respect of decommissioning and clean-up of nuclear sites) extends only to England and Wales and to Northern Ireland.

656. *Subsection (7)* states that the minor and consequential amendments covered in Schedule 12 will have the same extent as the provisions they amend except for four exceptions that are listed in *paragraphs (a)* to *(d)* of that subsection.

Section 156: Commencement

657. This section sets out the commencement dates for the provisions in the Act. *Subsection (1)* sets out the default position, which is that provisions are to come into force on a day appointed by Secretary of State in a commencement order. Where the default position applies the Secretary of State may appoint different days for different purposes and make transitional provisions and savings (see *subsection (4)*). But *subsections (2)* and *(3)* set out exceptions from the default position.

658. *Subsection (2)* provides that the following provisions will come into force two months after the Act receives Royal Assent:

- Chapter 5 of Part 2 (conflicts of interest and contingency arrangements);
- Chapter 6 of Part 2 (access to markets);
- section 56 (transition to certificate purchase scheme);
- Chapter 8 of Part 2 (emissions performance standard);
- Part 5 (strategy and policy statement), other than section 138(1), (4) and (5) (consequential provision);
- sections 139 to 142 (domestic tariffs: modifications of electricity supply licences);
- section 143 (powers to alter activities requiring licences: activities related to supply contracts);
- section 144 (consumer redress orders);
- section 145 (fuel poverty);
- section 146 (feed-in tariffs: increase in maximum capacity of plant);
- section 147 (offshore transmission systems);
- section 149 (fees in respect of decommissioning and clean-up of nuclear sites).

659. *Subsection (3)* provides that the following provisions come into force on the day the Act receives Royal Assent:

- Part 1 (decarbonisation);
- Chapter 1 of Part 2 (general considerations);
- Chapter 2 of Part 2 (contracts for difference);
- Chapter 3 of Part 2 (capacity market);
- Chapter 4 of Part 2 (investment contracts);
- section 55 (closure of support under the renewables obligation);
- Chapter 9 of Part 2 (miscellaneous);
- section 113 (subordinate legislation under Part 3);
- section 114(1) (power to make transitional provisions in relation to Part 3);
- section 115 (transfer of staff, etc, for the purposes of Part 3);
- section 116(2) (power to make consequential amendments in relation to Part 3);

- section 118 (review of Part 3);
- section 151 (review of certain provisions of Part 6);
- Part 7 (final).

Section 157: Short title

660. This section confirms the short title of the Act.

COMMENCEMENT

661. Chapters 5, 6 and 8 of Part 2, Part 5 (other than section 138(1), (4) and (5)), section 56, sections 139 to 147 and section 149, come into force two months after Royal Assent. Part 1, Chapters 1 to 4 and 9 of Part 2, sections 55, 113, 114(1), 115, 116(2), 118 and 151, and Part 7 come into force on the day on which the Act receives Royal Assent. All other provisions of the Act will be brought into force by order on a day appointed by Secretary of State. An order may appoint different days for different purposes or make transitional provision and savings.

HANSARD REFERENCES

662. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	*Date*	*Hansard Reference*
House of Commons		
Introduction	29 November 2012	Vol. 554 Col. 404
Second Reading	19 December 2012	Vol. 555 Cols. 897-963
Committee	15 January 2013	Hansard Public Bill Committee Energy Bill
	17 January 2013	
	22 January 2013	
	24 January 2013	
	29 January 2013	
	31 January 2013	
	5 February 2013	
	7 February 2013	
Reintroduction	9 May 2013	Vol. 563 Col. 164
Report and Third Reading	3 June 2013	Vol. 563 Cols. 1261-1349
	4 June 2013	Vol. 563 Cols. 1387-1492
Carry-over motion	18 November 2013	Vol. 570 Cols. 1047-1051
Commons consideration of Lords Amendments	4 December 2013	Vol. 571 Cols. 942-992
Royal Assent	18 December 2013	Vol. 572 Col. 760

Stage	***Date***	***Hansard Reference***
House of Lords		
Introduction	5 June 2013	Vol. 745 Col. 1178
Second Reading	18 June 2013	Vol. 746 Col. 141-238
Committee	2 July 2013	Vol. 746 Cols. GC347-GC418
	4 July 2013	Vol. 746 Cols. GC 465-GC522
	9 July 2013	Vol. 747 Cols. GC35-GC82
	11 July 2013	Vol. 747 Cols. GC129-GC192
	16 July 2013	Vol. 747 Cols. GC221-GC282
	18 July 2013	Vol. 747 Cols. GC325-GC386
	23 July 2013	Vol. 747 Cols. GC423-GC480
	25 July 2013	Vol. 747 Cols. GC539-GC582
	30 July 2013	Vol. 747 Cols. GC625-GC686
Report	28 October 2013	Vol. 748 Cols. 1333-1442
	4 November 2013	Vol. 749 Cols. 12-78
	6 November 2013	Vol. 749 Cols. 238-318
Third Reading	19 November 2013	Vol. 749 Cols. 871-906
Lords consideration of Commons Reasons	11 December 2013	Vol. 750 Cols. 783-798
Royal Assent	18 December 2013	Vol. 750 Col. 1255