

ENERGY ACT 2013

EXPLANATORY NOTES

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;

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

- *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 Ministers 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.