

ENERGY ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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 section 5 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.