

ENERGY ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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 types 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.