

LORDS AMENDMENTS TO THE  
**ENERGY BILL**

*[The page and line references are to HL Bill 52, the bill as first printed for the Lords.]*

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**Clause 20**

- 1** Page 11, line 13, after “authority” insert “, after consulting the licence holder,”

**Clause 34**

- 2** Page 18, line 8, leave out “another person” and insert “a public body”
- 3** Page 18, line 14, leave out “persons” and insert “bodies”
- 4** Page 18, line 15, leave out “person” and insert “body”
- 5** Page 18, line 17, leave out “persons” and insert “bodies”
- 6** Page 18, line 19, leave out “persons” and insert “bodies”
- 7** Page 18, line 21, leave out “person” and insert “body”
- 8** Page 18, line 22, leave out “person’s” and insert “body’s”
- 9** Page 18, line 24, leave out “person” and insert “body”
- 10** Page 18, line 30, leave out “person” and insert “body”
- 11** Page 18, line 38, leave out “person” and insert “body”

**Clause 35**

- 12** Page 19, leave out line 23
- 13** Page 19, line 24, at end insert “, or  
(c) if no provision has been made by virtue of paragraph (b), for the general or residual purposes of that Act.”

### Clause 37

- 14 Page 19, line 35, leave out “Secretary of State” and insert “relevant minister”
- 15 Page 19, line 35, at end insert –
- “(1A) “The relevant minister” means –
- (a) in the case of Scotland, the Scottish Ministers,
- (b) in any other case, the Secretary of State.
- (1B) In subsection (1A) “Scotland” includes –
- (a) so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland, and
- (b) a Renewable Energy Zone, or any part of such a Zone, which is designated by order under section 84(5) of the Energy Act 2004 (areas in relation to which Scottish Ministers have functions).”
- 16 Page 20, leave out lines 7 to 9 and insert “to customers in the relevant part of Great Britain,”
- 17 Page 20, leave out lines 14 to 19 and insert “the amount of electricity supplied by it during a specified period to customers in the relevant part of Great Britain.”
- 18 Page 20, line 27, after “in” insert “the relevant part of”
- 19 Page 21, line 2, after “in” insert “the relevant part of”
- 20 Page 21, line 9, at end insert –
- “( ) Except as provided by a renewables obligation order, a renewables obligation certificate counts towards discharging the renewables obligation regardless of whether the order under which it is issued is made by the Secretary of State or the Scottish Ministers.”
- 21 Page 21, line 10, leave out from beginning to “may” in line 11 and insert “A renewables obligation order”
- 22 Page 21, line 14, leave out “that” and insert “the relevant”
- 23 Page 23, line 42, at end insert –
- “( ) In this section “generating station” –
- (a) in the case of an order made by the Scottish Ministers, means a generating station which is situated in Scotland;
- (b) in the case of an order made by the Secretary of State, means a generating station which is not situated in Scotland.
- ( ) For this purpose “Scotland” is to be construed in accordance with section 32(1B).”
- 24 Page 25, line 23, leave out “Secretary of State” and insert “relevant minister”
- 25 Page 26, line 9, after “made” insert “by the relevant minister”
- 26 Page 26, line 10, after “made” insert “by that minister”
- 27 Page 26, line 13, leave out “Secretary of State” and insert “relevant minister”
- 28 Page 26, line 16, leave out “Secretary of State” and insert “relevant minister”
- 29 Page 26, line 17, leave out “the Secretary of State” and insert “that minister”

- 30 Page 26, line 34, leave out from “awarded” to end of line 39 and insert “if—  
(a) the generating station is of a specified description, or  
(b) the circumstances of the case meet specified requirements.  
( ) The requirements specified under subsection (4)(b) may relate to the time when the grant was awarded (whether a time before or after the coming into force of this section).”
- 31 Page 26, line 42, leave out “each” and insert “a”
- 32 Page 27, line 5, at end insert—  
“( ) If the grant in respect of which an amount falls to be paid under paragraph (a) or (b) of subsection (5) was paid by the Scottish Ministers, the references in those paragraphs to the Secretary of State are to be read as references to those Ministers.”
- 33 Page 27, leave out lines 16 to 27
- 34 Page 32, line 21, leave out “Secretary of State” and insert “relevant minister”
- 35 Page 32, line 28, leave out “Secretary of State” and insert “relevant minister”
- 36 Page 32, line 29, leave out “Secretary of State” and insert “relevant minister”
- 37 Page 32, line 31, after “made” insert “by the Secretary of State”
- 38 Page 32, line 33, at end insert—  
“( ) A renewables obligation order is not to be made by the Scottish Ministers unless a draft of the instrument containing it has been laid before and approved by a resolution of the Scottish Parliament.”
- 39 Page 33, line 8, at end insert—  
““the relevant minister” has the meaning given by section 32;  
“the relevant part of Great Britain” means—  
(a) in the case of a renewables obligation order made by the Secretary of State, England and Wales (including so much of the internal waters and territorial sea of the United Kingdom as are adjacent to England or Wales);  
(b) in the case of a renewables obligation order made by the Scottish Ministers, Scotland (including so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland);”
- 40 Page 33, line 37, at end insert—  
“( ) For the purposes of the definition of “the relevant part of Great Britain”, the territorial sea adjacent to England is the territorial sea adjacent to the United Kingdom, other than the territorial sea adjacent to Scotland, Wales or Northern Ireland.  
( ) An Order in Council under section 126(2) of the Scotland Act 1998 (c. 46) (apportionment of sea areas) has effect for the purposes of this section and sections 32 to 32L if, or to the extent that, the Order is expressed to apply—  
(a) by virtue of this subsection, for those purposes, or  
(b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.

- ( ) An order or Order in Council made under or by virtue of section 158(3) or (4) of the Government of Wales Act 2006 (apportionment of sea areas) has effect for the purposes of this section if, or to the extent that, the order or Order in Council is expressed to apply –
  - (a) by virtue of this subsection, for those purposes, or
  - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.
- ( ) An Order in Council under section 98(8) of the Northern Ireland Act 1998 (c. 46) (apportionment of sea areas) has effect for the purposes of this section if, or to the extent that, the Order is expressed to apply –
  - (a) by virtue of this subsection, for those purposes, or
  - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.”

41 Page 33, line 41, at end insert –

“( ) to customers in the relevant part of Great Britain;”

#### After Clause 40

42 Insert the following new Clause –

#### “Feed-in tariffs: electricity

- (1) The Secretary of State may modify –
  - (a) a condition of a particular licence under section 6(1)(c) or (d) of the Electricity Act 1989 (c. 29) (distribution and supply licences);
  - (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;
  - (c) a document maintained in accordance with the conditions of licences under section 6(1) of that Act, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may exercise the power in subsection (1) for the purpose only of –
  - (a) establishing, or making arrangements for the administration of, a scheme of financial incentives to encourage small-scale low-carbon generation of electricity;
  - (b) requiring or enabling the holder of a distribution licence to make arrangements for the distribution of electricity generated by small-scale low-carbon generation;
  - (c) requiring the holder of a licence to make arrangements related to the matters mentioned in paragraph (a) or (b).
- (3) Modifications made by virtue of subsection (1) may include –
  - (a) provision requiring the holder of a supply licence to make a payment to a small-scale low-carbon generator, or to the Authority for onward payment to such a generator, in specified circumstances;
  - (b) provision specifying how a payment under paragraph (a) is to be calculated;
  - (c) provision for the level of payment under paragraph (a) to decrease year by year in accordance with a formula published, or to be published, by the Secretary of State;

- (d) provision about the circumstances in which no payment, or a reduced payment, may be made to a small-scale low-carbon generator;
  - (e) provision about the circumstances in which a payment may be recovered from a small-scale low-carbon generator;
  - (f) a requirement for the holder of a supply licence or distribution licence to pay a levy to the Authority at specified times;
  - (g) provision specifying how a levy under paragraph (f) is to be calculated (which may require specified matters to be determined by the Authority or the Secretary of State);
  - (h) provision conferring an entitlement on the holder of a supply licence or distribution licence to receive a payment from the Authority.
- (4) In this section –
- “Authority” means the Gas and Electricity Markets Authority;
  - “distribution licence” means a licence under section 6(1)(c) of the Electricity Act 1989 (c. 29);
  - “owner”, in relation to any plant which is the subject of a hire purchase agreement, a conditional sale agreement or any agreement of a similar nature, means the person in possession of the plant under that agreement;
  - “plant” includes any equipment, apparatus or appliance;
  - “small-scale low-carbon generation” means the use, for the generation of electricity, of any plant –
    - (a) which, in generating electricity, relies wholly or mainly on a source of energy or a technology mentioned in subsection (5), and
    - (b) the capacity of which to generate electricity does not exceed the specified maximum capacity;
  - “small-scale low-carbon generator” means an owner of plant used or intended to be used for small-scale low-carbon generation, whether or not the person is also operating or intending to operate the plant;
  - “specified maximum capacity” means the capacity specified by the Secretary of State by order, which must not exceed 3 megawatts;
  - “supply licence” means a licence under section 6(1)(d) of the Electricity Act 1989 (c. 29).
- (5) The sources of energy and technologies are –
- (a) biomass;
  - (b) biofuels;
  - (c) fuel cells;
  - (d) photovoltaics;
  - (e) water (including waves and tides);
  - (f) wind;
  - (g) solar power;
  - (h) geothermal sources;
  - (i) combined heat and power systems with an electrical capacity of 50 kilowatts or less.
- (6) The Secretary of State may by order modify the list of sources of energy and technologies for the time being listed in subsection (5).
- (7) The power conferred by subsection (1) –

- (a) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);
  - (b) may be exercised differently in different cases or circumstances;
  - (c) includes a power to make incidental, supplemental, consequential or transitional modifications.
- (8) Provision included in a licence by virtue of that power –
- (a) need not relate to the activities authorised by the licence;
  - (b) may make different provision for different cases.”

**43** Insert the following new Clause –

**“Power to amend licence conditions etc: procedure**

- (1) Before making a modification, the Secretary of State must consult –
  - (a) the holder of any licence being modified,
  - (b) the Gas and Electricity Markets Authority, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (2) Subsection (1) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (3) Before making modifications, the Secretary of State must lay a draft of the modifications before Parliament.
- (4) If, within the 40-day period, either House of Parliament resolves not to approve the draft, the Secretary of State may not take any further steps in relation to the proposed modifications.
- (5) If no such resolution is made within that period, the Secretary of State may make the modifications in the form of the draft.
- (6) Subsection (4) does not prevent a new draft of proposed modifications being laid before Parliament.
- (7) The Secretary of State must publish details of any modifications as soon as reasonably practicable after they are made.
- (8) In this section, “40-day period”, in relation to a draft of proposed modifications, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).
- (9) For the purposes of calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (10) In this section “modification” means a modification under section (*Feed-in tariffs: electricity*)(1).”

**44** Insert the following new Clause –

**“Feed-in tariffs: supplemental**

- (1) A modification under section (*Feed-in tariffs: electricity*) of 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 the purposes of Part 1 of the Electricity Act 1989 (c. 29).

- (2) Where the Secretary of State makes modifications under section (*Feed-in tariffs: electricity*)(1)(b) of the standard conditions of a licence of any type, the Gas and Electricity Markets Authority (“the Authority”) must –
- (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
  - (b) publish the modification.
- (3) The Secretary of State may by order –
- (a) make provision conferring functions on the Authority or the Secretary of State (or both) in connection with the administration of any scheme established by virtue of section (*Feed-in tariffs: electricity*);
  - (b) make such modifications of provision made by or under an Act or an Act of the Scottish Parliament (whenever passed or made) as the Secretary of State considers appropriate in consequence of provision made under paragraph (a) or section (*Feed-in tariffs: electricity*).

#### Clause 41

45 Page 38, leave out lines 5 to 8 and insert “after subsection (1) insert –

- “(1A) An electric line is a relevant offshore line for the purposes of the definition in subsection (1) of “high voltage line” if –
- (a) it is wholly or partly in an area of GB internal waters, an area of the territorial sea adjacent to the United Kingdom or an area designated under section 1(7) of the Continental Shelf Act 1964, and
  - (b) it is –
    - (i) used to convey electricity to a place in Scotland, or
    - (ii) constructed wholly or mainly for the purpose of conveying, to any other place, electricity generated by a generating station situated in an area mentioned in paragraph (a).”

#### Clause 51

46 Page 46, leave out lines 4 and 5 and insert –

- “(5A) The Secretary of State must publish guidance about factors which it may be appropriate to consider in deciding whether or not –”

47 Page 46, line 10, at end insert –

- “( ) When making a decision of a kind mentioned in subsection (5A), the Secretary of State must have regard to the guidance for the time being in force under this section.”

#### Clause 53

48 Page 46, line 43, at end insert –

- “( ) In this section “security” includes –
- (a) a charge over a bank account or any other asset;

- (b) a deposit of money;
- (c) a performance bond or guarantee;
- (d) an insurance policy;
- (e) a letter of credit.”

#### Clause 57

- 49 Page 48, line 40, leave out “false or misleading information” and insert “information which is false or misleading in a material respect”

#### Clause 67

- 50 Page 56, line 5, at end insert –
- “( ) In section 114(2) of that Act (interpretation), in the definition of “security” after paragraph (c) insert –
- “(ca) an insurance policy;”.”

#### Clause 69

- 51 Page 58, line 42, leave out “from the installation” and insert “from any activity within section 30(6) –
- (i) which has been or is carried on (or is intended to be carried on) from, by means of or on the installation, and
  - (ii) is an activity to which subsection (AA1) applies”

- 52 Page 58, line 44, at end insert –
- “(AA1) This subsection applies to an activity if –
- (a) where the activity is the exploitation or exploration of mineral resources, it relates to an oil field for which the installation is or is to be established or maintained;
  - (b) where the activity is the conveyance of minerals, the minerals are got, or to be got, from such an oil field;
  - (c) where the activity is the unloading, storage or recovery of gas, it relates to a controlled place (within the meaning of Chapter 2 or 3 of Part 1 of the Energy Act 2008) for which the installation is or is to be established or maintained;
  - (d) where the activity is the conveyance of gas being stored or recovered, the storage or recovery of the gas relates to such a controlled place;
  - (e) where the activity is within section 30(6)(c) –
    - (i) the installation is in an oil field in respect of which P has an interest, or
    - (ii) the installation is in a controlled place in respect of which P has a licence under Part 1 of the Energy Act 2008.

- (AB1) For the purposes of subsection (AA1) –
- (a) “oil field” means an area which the appropriate authority (within the meaning of paragraph 1(2) of Schedule 1 to the Oil Taxation Act 1975) has determined to be an oil field for the purposes of Part 1 of that Act,
  - (b) P has an interest in an oil field if P is entitled to derive, or has at any time been entitled to derive, any financial or other benefit from



activities within section 30(6) (other than paragraph (c)) carried on in the field.”

#### Clause 71

53 Page 60, line 39, at end insert –

- “( ) In this section “security” includes –
- (a) a charge over a bank account or any other asset;
  - (b) a deposit of money;
  - (c) a performance bond or guarantee;
  - (d) an insurance policy;
  - (e) a letter of credit.”

#### Before Clause 80

54 Insert the following new Clause –

#### “Duties of the Gas and Electricity Markets Authority

- (1) In section 4AA of the Gas Act 1986 (c. 44) (duties of the Gas and Electricity Markets Authority) –
  - (a) in subsection (1) after “interests of” insert “existing and future”,
  - (b) after subsection (2)(b) insert “; and
  - (c) the need to contribute to the achievement of sustainable development.”,
  - (c) omit subsection (5)(ba), and
  - (d) in subsection (6) for “this section “consumers” includes” substitute “subsections (3) and (4) references to consumers include”.
- (2) In section 3A of the Electricity Act 1989 (c. 29) (duties of the Gas and Electricity Markets Authority) –
  - (a) in subsection (1) after “interests of” insert “existing and future”,
  - (b) after subsection (2)(b) insert “; and
  - (c) the need to contribute to the achievement of sustainable development.”,
  - (c) omit subsection (5)(ba), and
  - (d) in subsection (6) for “this section “consumers” includes” substitute “subsections (3) and (4) references to consumers include”.

55 Insert the following new Clause –

#### “Power to amend licence conditions etc: transmission systems

- (1) The Secretary of State may modify –
  - (a) a condition of a particular licence under section 6(1)(a) to (d) of the Electricity Act 1989 (c. 29) (generation, transmission, distribution and supply licences);
  - (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;
  - (c) a document maintained in accordance with the conditions of licences under section 6(1)(a) to (d) of that Act, or an agreement that gives effect to a document so maintained.

- (2) The Secretary of State may exercise the power conferred by subsection (1) for the purpose only of facilitating –
  - (a) access to a transmission system in Great Britain or offshore waters;
  - (b) efficient use of a transmission system in Great Britain or offshore waters.
- (3) The power conferred by subsection (1) –
  - (a) may be exercised to make different provision in relation to different classes of customer;
  - (b) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);
  - (c) may be exercised differently in different cases or circumstances;
  - (d) includes a power to make incidental, supplementary, consequential or transitional modifications.
- (4) The power conferred by subsection (1) may not be exercised after the end of the period of 2 years beginning with the day on which that subsection comes into force.
- (5) Provision included in a licence by virtue of that power –
  - (a) need not relate to the activities authorised by the licence;
  - (b) may do any of the things authorised by section 7(2) to (4) of the Electricity Act 1989 (c. 29) (which apply to the Gas and Electricity Markets Authority’s power with respect to licence conditions under section 7(1)(a)).
- (6) In this section –
 

“offshore waters” means –

  - (a) waters in or adjacent to Great Britain which are between the low water mark and the seaward limits of the territorial sea, and
  - (b) waters within an area designated under section 1(7) of the Continental Shelf Act 1964 (c. 29);

“transmission system” has the meaning given by section 4(4) of the Electricity Act 1989 (c. 29).”

56 Insert the following new Clause –

**“Section (Power to amend licence conditions etc: transmission systems): procedure**

- (1) Before making a modification, the Secretary of State must consult –
  - (a) the holder of any licence being modified,
  - (b) the Gas and Electricity Markets Authority, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (2) Subsection (1) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (3) The Secretary of State must publish details of any modifications as soon as reasonably practicable after they are made.
- (4) In this section “modification” means a modification under section (*Power to amend licence conditions etc: transmission systems*).”

57 Insert the following new Clause—

**“Section (Power to amend licence conditions etc: transmission systems):  
supplemental**

- (1) A modification under section (*Power to amend licence conditions etc: transmission systems*) of 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 the purposes of Part 1 of the Electricity Act 1989 (c. 29).
- (2) Where the Secretary of State makes modifications under section (*Power to amend licence conditions etc: transmission systems*)(1)(b) of the standard conditions of a licence of any type, the Gas and Electricity Markets Authority must—
  - (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
  - (b) publish the modification.
- (3) The Secretary of State may by order make such modifications of provisions made by or under an Act or an Act of the Scottish Parliament (whenever passed or made) as the Secretary of State considers appropriate in consequence of provision made under section (*Power to amend licence conditions etc: transmission systems*).”

**Clause 80**

58 Page 72, line 34, leave out from “(1)” to end of line 36 and insert “for “in each calendar year, beginning with 2004,” substitute “, for each reporting period,”

59 Page 72, line 38, leave out from “(c),” to end of line 40

60 Page 72, line 41, leave out “to (3), and” and insert “and (1C),

( ) for subsections (2) and (3) substitute—

“(2) “Reporting period”, for the purposes of subsections (1) to (1AA), means—

- (a) the period beginning with 24 February 2008 and ending with 31 December 2008, and
- (b) each successive calendar year.

(3) A sustainable energy report must be published during the period beginning with 1 January and ending with 31 October following the reporting period to which it relates (“the publication period”).”, and”

61 Page 73, line 9, leave out sub-paragraph (ii)

62 Page 73, leave out lines 12 to 18

**After Clause 83**

63 Insert the following new Clause—

**“Licensing of activities relating to smart meters**

Schedule (*Smart meters: licensable activities*) contains amendments to the Gas Act 1986 (c. 44) and the Electricity Act 1989 (c. 29).”

**After Clause 89**

64 Insert the following new Clause –

**“Costs connected with making an offer of connection**

- (1) Section 16A of the Electricity Act 1989 (c. 29) (procedure for requiring a connection) is amended as follows.
- (2) After subsection (4) insert –
  - “(4A) The Secretary of State may, after consulting the Authority, make provision by regulations for the purpose of entitling an electricity distributor to require a person requiring a connection in pursuance of section 16(1) to pay connection offer expenses to such extent as is reasonable in all the circumstances.
  - (4B) In this section “connection offer expenses” means expenses which –
    - (a) are of a kind specified by the regulations, and
    - (b) have been reasonably incurred by the electricity distributor.
  - (4C) Regulations under subsection (4A) may specify –
    - (a) circumstances in which an electricity distributor may not require the payment of connection offer expenses by virtue of the regulations;
    - (b) the manner in which expenses reasonably incurred by an electricity distributor are to be calculated for the purposes of subsection (4B)(b).”
- (3) In subsection (5) for “and any information” to “connection” substitute “, any information requested under subsection (3) and any amount payable by virtue of subsection (4A) to the distributor by the person requiring the connection, the distributor shall give to that person”.”

**After Clause 90**

65 Insert the following new Clause –

**“Renewable heat incentives**

- (1) The Secretary of State may make regulations –
  - (a) establishing a scheme to facilitate and encourage renewable generation of heat, and
  - (b) about the administration and financing of the scheme.
- (2) Regulations under this section may, in particular –
  - (a) make provision for the Secretary of State or the Authority to make payments, or to require designated fossil fuel suppliers to make payments, in specified circumstances, to –

- (i) the owner of plant used or intended to be used for the renewable generation of heat, whether or not the owner is also operating or intending to operate the plant;
  - (ii) a producer of biogas or biomethane;
  - (iii) a producer of biofuel for generating heat;
  - (b) make provision about the calculation of such payments;
  - (c) make provision about the circumstances in which such payments may be recovered;
  - (d) require designated fossil fuel suppliers to provide specified information to the Secretary of State or the Authority;
  - (e) require the payment of a levy by designated fossil fuel suppliers to the Secretary of State or the Authority;
  - (f) make provision about the calculation of the levy;
  - (g) make provision for payments to fossil fuel suppliers in specified circumstances;
  - (h) make provision about the enforcement of obligations imposed by or by virtue of the regulations (which may include a power for the Secretary of State or the Authority to impose financial penalties);
  - (i) confer functions on the Secretary of State or the Authority, or both.
- (3) In this section –
- “Authority” means the Gas and Electricity Markets Authority;
  - “biofuel” means liquid or gaseous fuel which is produced wholly from biomass;
  - “biogas” means gas produced by the anaerobic conversion of organic matter;
  - “biomass” means material, other than fossil fuel, which is, or is derived directly or indirectly from, plant matter, animal matter, fungi or algae;
  - “biomethane” means biogas which is suitable for conveyance through pipes to premises in accordance with a licence under section 7 of the Gas Act 1986 (c. 44) (gas transporter licences);
  - “designated fossil fuel suppliers” means –
    - (a) if the regulations so provide, a specified class of fossil fuel suppliers, and
    - (b) in any other case, all fossil fuel suppliers;
  - “fossil fuel” means –
    - (a) coal;
    - (b) lignite;
    - (c) natural gas (within the meaning of the Energy Act 1976 (c. 76));
    - (d) crude liquid petroleum;
    - (e) petroleum products (within the meaning of that Act);
    - (f) any substance produced directly or indirectly from a substance mentioned in paragraphs (a) to (e);
  - “fossil fuel supplier” means a person who supplies fossil fuel to consumers for the purpose of generating heat;
  - “owner”, in relation to any plant which is the subject of a hire purchase agreement, a conditional sale agreement or any agreement of a similar nature, means the person in possession of the plant under that agreement;
  - “plant” includes any equipment, apparatus or appliance;

“renewable generation of heat” means the generation of heat by means of a source of energy or technology mentioned in subsection (4).

- (4) The sources of energy and technologies are –
  - (a) biomass;
  - (b) biofuels;
  - (c) fuel cells;
  - (d) water (including waves and tides);
  - (e) solar power;
  - (f) geothermal sources;
  - (g) heat from air, water or the ground;
  - (h) combined heat and power systems (but only if the system’s source of energy is a renewable source within the meaning given by section 32M of the Electricity Act 1989 (c. 29)).
- (5) Regulations may –
  - (a) modify the list of sources of energy and technologies in subsection (4);
  - (b) modify the definition of “biogas” or “biomass” in subsection (3).
- (6) Regulations may make provision, for the purposes of subsection (2)(a)(iii) and the definition of “fossil fuel supplier”, specifying that particular activities do or do not constitute generating heat.
- (7) Before making regulations under this section which extend to Scotland, the Secretary of State must –
  - (a) if the regulations contain any provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament, obtain the consent of the Scottish Ministers;
  - (b) in any other case, consult the Scottish Ministers.”

#### After Clause 91

66 Insert the following new Clause –

#### “Application of general duties to functions relating to licences

- (1) Sections 4AA to 4B of the Gas Act 1986 (c. 44) (principal objectives and general duties) apply to the carrying out, as respects the matters mentioned in subsection (2), of functions conferred on the Secretary of State or the Authority by or under –
  - (a) sections 81 to 83;
  - (b) section 86.
- (2) The matters are –
  - (a) activities required to be authorised by gas licences,
  - (b) such licences and the conditions of such licences,
  - (c) documents maintained in accordance with the conditions of such licences, or agreements that give effect to documents so maintained, and
  - (d) companies holding such licences.

- (3) In section 4AA(2)(b) of the Gas Act 1986 (c. 44) (duty to have regard to ability of licence holders to finance obligations) for “or the Utilities Act 2000” substitute “, the Utilities Act 2000 or Part 5 of the Energy Act 2008”.
- (4) Sections 3A to 3D of the Electricity Act 1989 (c. 29) (principal objectives and general duties) apply to the carrying out, as respects the matters mentioned in subsection (5), of functions conferred on the Secretary of State or the Authority by or under –
- (a) sections (*Feed-in tariffs: electricity*) to (*Feed-in tariffs: supplemental*);
  - (b) sections (*Power to amend licence conditions etc: transmission systems*) to (*Section (Power to amend licence conditions etc: transmission systems): supplemental*);
  - (c) sections 81 to 83;
  - (d) section 89.
- (5) The matters are –
- (a) activities required to be authorised by electricity licences,
  - (b) such licences and the conditions of such licences,
  - (c) documents maintained in accordance with the conditions of such licences, or agreements that give effect to documents so maintained, and
  - (d) companies holding such licences.
- (6) In section 3A(2)(b) of the Electricity Act 1989 (c. 29) (duty to have regard to ability of licence holders to finance obligations) for “or Part 2 or 3 of the Energy Act 2004” substitute “, Part 2 or 3 of the Energy Act 2004 or Part 2 or 5 of the Energy Act 2008”.
- (7) In this section –
- “the Authority” means the Gas and Electricity Markets Authority;
- “electricity licence” means a licence for the purposes of section 4 of the Electricity Act 1989 (c. 29) (prohibition on unlicensed activities);
- “gas licence” means a licence for the purposes of section 5 of the Gas Act 1986 (c. 44) (prohibition on unlicensed activities).”

#### Clause 94

- 67 Page 82, line 40, after “contains” insert “, or regulations which contain,”
- 68 Page 82, line 41, at end insert –
- “( ) section 13 (importation and storage of combustible gas: inspectors),
  - ( ) section 27 (carbon dioxide storage: inspectors),”
- 69 Page 83, line 2, at end insert –
- “( ) section (*Feed-in tariffs: electricity*)(6) (feed-in tariffs for small-scale electricity generation),”
- 70 Page 83, line 2, at end insert –
- “( ) section (*Renewable heat incentives*) (renewable heat incentives);”
- 71 Page 83, line 5, after “section” insert “(*Feed-in tariffs: supplemental*)(3)(b),”
- 72 Page 83, line 5, after “section” insert (*Section (Power to amend licence conditions etc: transmission systems): supplemental*)(3),”

**Clause 99**

73 Page 84, line 18, leave out subsection (1) and insert –

“(1) The following provisions come into force on the day on which this Act is passed –

- (a) section 37, so far as is necessary for enabling the exercise on or after that day of any power to make an order that is conferred by virtue of that section, and section 38(1);
- (b) sections 81 to (*Licensing of activities relating to smart meters*) (and sections 93 and 94 in so far as those sections apply in relation to orders made under section 83(3)) and Schedule [*Smart meters: licensable activities*];
- (c) section (*Application of general duties to functions relating to licences*);
- (d) this section and sections 95, 100, 101 and 102;
- (e) paragraph 2B of Schedule 4 (and section 96(1) so far as it relates to that paragraph).”

74 Page 84, line 23, leave out subsections (3) to (5)

**Clause 101**

75 Page 85, line 9, at end insert –

“( ) sections (*Feed-in tariffs: electricity*) to (*Feed-in tariffs: supplemental*) (feed-in tariffs for electricity generation);”

76 Page 85, line 10, at end insert –

“( ) sections (*Power to amend licence conditions etc: transmission systems*) to (*Section (Power to amend licence conditions etc: transmission systems): supplemental*);”

77 Page 85, line 13, at end insert –

“( ) section (*Renewable heat incentives*) (renewable heat incentives);”

78 Page 85, line 13, at end insert –

“( ) section (*Application of general duties to functions relating to licences*);”

**Schedule 1**

79 Page 87, line 5, leave out “Order” and insert “order or Order in Council”

80 Page 87, leave out line 7

81 Page 87, line 9, at end insert “, or

- ( ) if no provision has been made by virtue of paragraph (b), for the general or residual purposes of that Act.”

82 Page 88, leave out line 38

83 Page 88, line 39, at end insert “, or

- ( ) if no provision has been made by virtue of paragraph (b), for the general or residual purposes of that Act.”



### Schedule 2

- 84 Page 105, line 20, leave out “asset owner” and insert “person who was the asset owner immediately before the scheme came into operation”
- 85 Page 105, line 28, leave out “asset owner or the successful bidder” and insert “the successful bidder or the person who was the asset owner immediately before the scheme came into operation”

### After Schedule 3

- 86 Insert the following new Schedule –

#### SMART METERS: LICENSABLE ACTIVITIES

##### PART 1

##### GAS

- 1 After section 41H of the Gas Act 1986 (c. 44), insert –

#### **“41HA New licensable activities: smart meters**

- (1) The Secretary of State may by order amend this Part so as to provide –
  - (a) for one or more activities within subsection (3) to be added to the activities which are licensable activities, or
  - (b) where an order has previously been made under paragraph (a) in relation to an activity, for the activity to cease to be a licensable activity.
- (2) For the purposes of this Part activities are licensable activities if undertaking them without the authority of a licence or exemption constitutes an offence under section 5(1).
- (3) The activities within this subsection are activities connected with the provision, installation or operation of relevant meters, including the provision or installation of infrastructure, or the provision of services, in connection with the communication of information by or to such meters.
- (4) In this section –
  - (a) “relevant meter” means a meter of a kind prescribed by the order;
  - (b) a reference to a meter includes a reference to a visual display unit, or any other device, associated with or ancillary to a meter.
- (5) An order under this section may make consequential, transitional, incidental or supplementary provision, including –
  - (a) amendments (or repeals) in any provision of this Act or any other enactment;
  - (b) in the case of an order under subsection (1)(a), provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of the activities;
  - (c) provision modifying any standard conditions of licences.

- (6) Without prejudice to the generality of subsections (1) and (5), an order under this section may also make provision—
  - (a) for licences to authorise the holder to carry out the licensable activities in any area, or only in an area specified in the licence;
  - (b) enabling the terms of the licence to be modified so as to extend or restrict the area in which the licence holder may carry on the licensable activities;
  - (c) specifying that a licence, and any modification of a licence, must be in writing;
  - (d) for a licence, if not previously revoked, to continue in force for such period as may be specified in or determined by or under the licence;
  - (e) conferring functions on the Secretary of State or the Authority.
- (7) An order under this section may provide that it is to remain in force only for the period specified in the order.

#### **41HB Section 41HA: supplemental**

- (1) Before making an order under section 41HA, the Secretary of State must consult—
  - (a) the Authority, and
  - (b) such other persons as the Secretary of State thinks appropriate.
- (2) The power to make such an order may not be exercised after the end of the period of 5 years beginning with the day on which section 41HA comes into force.
- (3) An order under section 41HA may not be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Subsections (1) to (3) of section 47 apply in relation to orders under section 41HA as they apply in relation to regulations under this Part.

#### **41HC Competitive tendering for licences for new licensable activities**

- (1) The Secretary of State may by regulations make provision for a determination on a competitive basis of the person to whom a licence in respect of new licensable activities is to be granted.
- (2) In this section “new licensable activities” means one or more activities which are the subject of an order under section 41HA(1)(a).
- (3) The regulations may—
  - (a) provide for the determination to be made by the Secretary of State or the Authority;
  - (b) provide, in prescribed cases, for the publication of a proposal to grant a licence in respect of the new licensable activities;
  - (c) provide for the inclusion in such a proposal of an invitation to apply for such a licence;

- (d) impose conditions in relation to the making of an application for a licence;
  - (e) impose restrictions in relation to persons who may apply for a licence;
  - (f) impose requirements as to the period within which applications must be made;
  - (g) make provision for regulating the manner in which applications are to be considered or determined;
  - (h) authorise or require the Secretary of State or the Authority, when determining to whom a licence is to be granted, to have regard to the person's suitability for being granted both the licence and an electricity licence;
  - (i) confer on the Authority or the Secretary of State functions in connection with tender exercises.
- (4) The regulations may also include provision –
- (a) enabling the Secretary of State or the Authority to require prescribed persons, in relation to a tender exercise, to make payments, in the form and manner prescribed, in respect of tender costs;
  - (b) about the effect on a person's participation in the tender exercise of a failure to comply with a requirement imposed by virtue of paragraph (a), and the circumstances in which the tender exercise is to stop as a result of such a failure.
- (5) In this section –
- “electricity licence” means a licence for an activity to which an order under section 56FA(1)(a) of the Electricity Act 1989 applies;
  - “prescribed” means prescribed in or determined under regulations under this section;
  - “tender costs”, in relation to a tender exercise, means any costs incurred or likely to be incurred by the Authority or the Secretary of State for the purposes of the exercise;
  - “tender exercise” means the steps taken in accordance with regulations with a view to determining to whom a particular licence is to be granted.
- (6) Any sums received by the Secretary of State or the Authority under regulations made by virtue of this section are to be paid into the Consolidated Fund.”

## PART 2

### ELECTRICITY

- 2 After section 56F of the Electricity Act 1989 (c. 29) insert –

**“56FA New licensable activities: smart meters**

- (1) The Secretary of State may by order amend this Part so as to provide –
  - (a) for one or more activities within subsection (3) to be added to the activities which are licensable activities, or

- (b) where an order has previously been made under paragraph (a) in relation to an activity, for the activity to cease to be a licensable activity.
- (2) For the purposes of this Part activities are licensable activities if undertaking them without the authority of a licence or exemption constitutes an offence under section 4(1).
- (3) The activities within this subsection are activities connected with the provision, installation or operation of relevant meters, including the provision or installation of infrastructure, or the provision of services, in connection with the communication of information by or to such meters.
- (4) In this section –
  - (a) “relevant meter” means a meter of a kind prescribed by the order;
  - (b) a reference to a meter includes a reference to a visual display unit, or any other device, associated with or ancillary to a meter.
- (5) An order under this section may make consequential, transitional, incidental or supplementary provision, including –
  - (a) amendments (or repeals) in any provision of this Act or any other enactment;
  - (b) in the case of an order under subsection (1)(a), provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of the activities;
  - (c) provision modifying any standard conditions of licences.
- (6) Without prejudice to the generality of subsections (1) and (5), an order under this section may also make provision –
  - (a) for licences to authorise the holder to carry out the licensable activities in any area, or only in an area specified in the licence;
  - (b) enabling the terms of the licence to be modified so as to extend or restrict the area in which the licence holder may carry on the licensable activities;
  - (c) specifying that a licence, and any modification of a licence, must be in writing;
  - (d) for a licence, if not previously revoked, to continue in force for such period as may be specified in or determined by or under the licence;
  - (e) conferring functions on the Secretary of State or the Authority.
- (7) An order under this section may provide that it is to remain in force only for the period specified in the order.

**56FB Section 56FA: supplemental**

- (1) Before making an order under section 56FA, the Secretary of State must consult –
  - (a) the Authority, and
  - (b) such other persons as the Secretary of State thinks appropriate.

- (2) The power to make such an order may not be exercised after the end of the period of 5 years beginning with the day on which section 56FA comes into force.
- (3) An order under section 56FA may not be made unless a draft of the statutory instrument containing it has been laid before, and approved by resolution of, each House of Parliament.
- (4) Section 60 applies in relation to an order under this section as it applies in relation to regulations under this Part.

#### **56FC Competitive tenders for licences for new licensable activities**

- (1) The Secretary of State may by regulations make provision for a determination on a competitive basis of the person to whom a licence in respect of new licensable activities is to be granted.
- (2) In this section “new licensable activities” means one or more activities which are the subject of an order under section 56FA(1)(a).
- (3) The regulations may –
  - (a) provide for the determination to be made by the Secretary of State or the Authority;
  - (b) provide, in prescribed cases, for the publication of a proposal to grant a licence in respect of the new licensable activities;
  - (c) provide for the inclusion in such a proposal of an invitation to apply for such a licence;
  - (d) impose conditions in relation to the making of an application for a licence;
  - (e) impose restrictions in relation to persons who may apply for a licence;
  - (f) impose requirements as to the period within which applications must be made;
  - (g) make provision for regulating the manner in which applications are to be considered or determined;
  - (h) authorise or require the Secretary of State or the Authority, when determining to whom a licence is to be granted, to have regard to the person’s suitability for being granted both the licence and a gas licence;
  - (i) confer on the Authority or the Secretary of State functions in connection with tender exercises.
- (4) The regulations may also include provision –
  - (a) enabling the Secretary of State or the Authority to require prescribed persons, in relation to a tender exercise, to make payments, in the form and manner prescribed, in respect of tender costs;
  - (b) about the effect on a person’s participation in the tender exercise of a failure to comply with a requirement imposed by virtue of paragraph (a), and the circumstances in which the tender exercise is to stop as a result of such a failure.
- (5) In this section –

“gas licence” means a licence for an activity to which an order under section 41HA of the Gas Act 1986 applies;  
 “prescribed” means prescribed in or determined under regulations under this section;  
 “tender costs”, in relation to a tender exercise, means any costs incurred or likely to be incurred by the Authority or the Secretary of State for the purposes of the exercise;  
 “tender exercise” means the steps taken in accordance with regulations with a view to determining to whom a particular licence is to be granted.

- (6) Any sums received by the Secretary of State or the Authority under regulations made by virtue of this section are to be paid into the Consolidated Fund.”

#### Schedule 4

87 Page 137, line 6, at end insert –

“Gas Act 1986 (c. 44)

In section 64(2) of that Act (orders) after “41C” insert “, 41HA,”.

88 Page 137, line 10, at end insert –

“2A In section 47 of that Act (general functions of the Authority) –

- (a) in subsection (1A) after “microgeneration” insert “or small-scale low-carbon generation”, and  
 (b) for subsection (1B) substitute –

“(1B) In subsection (1A) –

“microgeneration” has the same meaning as in the Climate Change and Sustainable Energy Act 2006;  
 “small-scale low-carbon generation” has the same meaning as in section (Feed-in tariffs: electricity) of the Energy Act 2008.”

89 Page 137, line 10, at end insert –

“2B In section 106 of that Act (regulations and orders), after subsection (1) insert –

“(1A) Any power of the Scottish Ministers to make orders under section 32 is exercisable by statutory instrument.”

90 Page 137, line 10, at end insert –

“In section 106(2)(b) of that Act (regulations and orders) for “or 56A” substitute “, 56A or 56FA”.

91 Page 137, line 26, after “section” insert “(Feed-in tariffs: electricity), (Power to amend licence conditions: transmission systems) or”

92 Page 137, line 26, after “section” insert “81 or”

93 Page 137, line 30, after “section” insert “81 or”

94 Page 137, line 31, after “information)” insert “–

- (a) in subsection (1)(a), omit the words from “or section 184(5)” to the end and insert “, section 184(5) or 185(5) of the Energy Act 2004 or section (*Feed-in tariffs: electricity*) or (*Renewable heat incentives*) of the Energy Act 2008;”,
- (b) in subsection (3)(a), after “2004” insert “sections (*Feed-in tariffs: electricity*) to (*Feed-in tariffs: supplemental*) or section (*Renewable heat incentives*) of the Energy Act 2008”, and”

#### Schedule 5

95 Page 138, line 22, column 2, at beginning insert –

| “Section 4AA(5)(ba).”

96 Page 138, line 23, at end insert –

“Electricity Act 1989 (c. 29) | Section 3A(5)(ba).”

97 Page 138, leave out lines 35 to 44 and insert “ –

- (a) subsection (1A)(a), (b) and (c), and
- (b) subsections (1B) and (1C).”

98 Page 139, leave out line 6

99 Page 139, line 6, at end insert –

“Section 180(2).”

100 Page 139, leave out lines 9 and 10

101 Page 139, leave out lines 12 to 15

#### In the Title

102 Line 2, after “sources;” insert “to make provision relating to electricity transmission;”

103 Line 2, after “sources;” insert “to make provision about payments to small-scale generators of low-carbon electricity;”

104 Line 8, after “matters;” insert “to make provision about the duties of the Gas and Electricity Markets Authority;”

105 Line 8, after “matters;” insert “to make provision about payments in respect of the renewable generation of heat;”

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LORDS AMENDMENTS TO THE  
**ENERGY BILL**

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