Memorandum to the Energy and Climate Change Committee: Post Legislative Scrutiny of the Energy Act 2008

Presented to Parliament
by the Secretary of State for Energy and Climate Change
by Command of Her Majesty

July 2014

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Post-legislative Scrutiny of the Energy Act 2008

Memorandum to the Energy and Climate Change Committee

MEMORANDUM TO THE ENERGY AND CLIMATE CHANGE COMMITTEE:

POST-LEGISLATIVE SCRUTINY OF THE ENERGY ACT 2008

This memorandum provides a preliminary assessment of the Energy Act 2008 and has been prepared by the Department of Energy and Climate Change for submission to the Energy and Climate Change Committee. It is published as part of the process set out by the previous Government in the document *Post Legislative Scrutiny – The Government's Approach (Cm 7320).*

The current Government has accepted the need to continue with the practice of post-legislative scrutiny as it supports the Coalition's aim of improving Parliament's consideration of legislation.

SUMMARY OF THE OBJECTIVES

Introduction

1. The Energy Act 2008 obtained Royal Assent on 26 November 2008 It contains the legislative provisions required to implement UK energy policy following the publication of the Energy Review 2006 and the Energy White Paper 2007, in particular by:
   a) strengthening the regulatory framework for offshore gas supply infrastructure to enable private sector investment;
   b) creating a regulatory framework to enable private sector investment in Carbon Capture and Storage projects;
   c) strengthening the Renewables Obligation to drive greater and more rapid deployment of renewables in the UK;
   d) strengthening statutory decommissioning provisions for offshore renewables and oil and gas installations to minimise the risk of liabilities falling to the Government;
   e) improving the offshore oil and gas licensing regime in response to changes in the commercial environment and enabling the Department for

Business Enterprise and Regulatory Reform to carry out its regulatory functions more effectively;

f) Ensuring the operators of new nuclear power stations accumulate funds to meet the full costs of decommissioning and their full share of waste management costs

g) Introducing amending powers such that Ofgem is able to run the offshore electricity transmission licensing regime more effectively.

2. These changes are driven by the two long-term energy challenges faced by the UK: tackling climate change by reducing carbon dioxide emissions, and ensuring secure, clean and affordable energy.

Part 1: Gas Importation and Storage

Chapter 1: Gas Importation and Storage Zones

3. This Chapter establishes rights relating to the unloading and storage of gas, and to related exploration activities. This is a precursor to the regulatory regimes to be established under Chapters 2 and 3 of Part 1, relating to the importation and storage of combustible gas, and storage of carbon dioxide.

Chapter 3: Storage of Carbon Dioxide

4. This Chapter of the Act establishes a framework for the licensing of carbon dioxide storage and the enforcement of the licence provisions. It also applies existing offshore legislation (for example the decommissioning legislation in the Petroleum Act 1998) to offshore structures used for the purposes of carbon dioxide storage. Chapter 1 of Part 1, amongst other things, asserts the UK's rights to the use of the offshore sub-surface space for the storage of carbon dioxide.

Chapter 2: Importation and Storage of Combustible Gas

5. This Part of the Act creates a new regulatory framework specifically designed for offshore gas storage and Liquefied Natural Gas unloading projects. The regime is intended to simplify the consenting process, reduce the administrative burdens on developers and create certainty over the legal

operation and construction of new facilities. The aim is to encourage timely investment in offshore gas supply infrastructure and to contribute to security of supply in the longer term.

Chapter 4: General Provisions about Gas Importation and Storage

6. Chapter 4; Section 36 and Schedule 1: Chapters 2 and 3: consequential amendments.

Part 2: Electricity from Renewable Sources

7. This Part of the Act mainly deals with the reforms made to the Renewables Obligation (RO) in Great Britain in accordance with proposals set out in the 2007 Energy White Paper and separate consultations on the RO. The reforms are designed to bring forward more renewables electricity generation and increase the efficiency and effectiveness of the RO. The most significant change to the RO was the introduction of banding, which enables the Secretary of State to set differentiated support rates for individual technologies in order to promote the deployment of a wider range of technologies more cost-effectively than was possible prior to the reforms.

8. The reforms introduced by this Act restructured the way the RO works while maintaining its overall aims. In practice there continues to be an obligation on suppliers to present certificates to the Authority or to pay a penalty and the buy-out fund continues to be recycled in order to promote competition in the renewables market. As there have been a number of previous changes to the RO primary legislation since the scheme was introduced in 2002, the Government took the opportunity through the Act to recast the existing RO legislation so that it is easier for the reader to follow.

9. Part 2 of the Act

a) enables the establishment of a system of feed in tariffs to be introduced to encourage smaller generators up to a maximum capacity cap of 5MW. Such a system would work in tandem with the RO which is bringing forward larger scale renewable electricity.

b) includes a framework intended to encourage the development of generation of electricity from offshore renewable energy sources. The new offshore transmission regime:

- requires the transmission assets to be owned and operated by a separate licensed entity (not the generator)
- extends National Grid's role as the onshore transmission system operator offshore;
- Introduces a competitive tender process for determining to whom the Authority will grant a transmission licence to build, maintain and finance the transmission assets for a project.

Part 3: Decommissioning of Energy Installations

Chapter 1: Nuclear Sites: Decommissioning and Clean Up

10. In 'Meeting the Energy Challenge: A White Paper on Nuclear Power', published in January 2008, the Government confirmed its view that it would be in the public interest to give energy companies the option of investing in new nuclear power stations. As well as ensuring operators are responsible for the costs of decommissioning of any new nuclear power station, and waste management and disposal during the lifetime of the station, Part 3 Chapter 1 of the Act sets out the framework for accumulating monies to pay for the costs of decommissioning and waste management.

11. This Chapter contains the legislative framework for requiring that a prospective operator must submit a Funded Decommissioning Programmes (FDP) for each nuclear power station to the Secretary of State for Energy and Climate Change. The FDP must be approved by the Secretary of State before the site can be used under the site licence. It also sets out how the programmes will be approved and monitored, establishes offences for non-compliance with the legislation, and provides for regulations and guidance in relation to the preparation, content, implementation and modification of programmes.

Chapter 2: Offshore Renewables Installations

12. The Government has international obligations to ensure that redundant offshore installations are removed from the seabed to ensure safety of navigation and to ensure the protection of fisheries and the rest of the marine environment. It has been a condition of recent statutory consents that the construction of an offshore renewable energy installation (OREI) may not commence until a decommissioning programme has been submitted for approval. This chapter includes new provisions intended to strengthen this scheme.

Chapter 3: Oil and Gas Installations

13. This Chapter strengthens the Secretary of State's statutory powers in relation to the decommissioning of offshore oil and gas installations and minimises the risk of liabilities falling to the Government.

14. These provisions amend Part 4 of the Petroleum Act 1998 which make provision about the preparation of abandonment programmes; the persons who may submit a programme; the approval, the consequences of a failure to submit and the revision of a programme; the duty to carry out a programme; the information required; and the regulations, offences and penalties which apply in relation to an abandonment programme.

15. The new provisions have amended the regime and:

- enable the Secretary of State to make all the relevant parties liable for the decommissioning of an installation or pipeline;

- give the Secretary of State power to require decommissioning security at any time during the life of an oil or gas field if the risks to the taxpayer are assessed as unacceptable;

- Protect the funds put aside for decommissioning, so in the event of insolvency of the relevant party, the funds remain available to pay for decommissioning and the taxpayers' exposure is minimised.

Chapter 4: Wells

This Chapter inserts new provisions into Part 5 of the Petroleum Act 1998 for the purpose of securing the proper abandonment of wells. In particular, there is a power to require the provision of financial information and to issue a notice, after consulting the Treasury, requiring the person who receives it to take action within a stated period. This power may be used to ensure that where the Secretary of State is not satisfied that a person will be capable of plugging and abandoning a well there is, nevertheless, financial security in place for this purpose.

Part 4: Provisions Relating to Oil and Gas

16. Part 4 of this Act makes amendments to Part 1 of the Petroleum Act 1998 giving the Secretary of State new powers relating to the unconsented transfer of rights or benefits under petroleum licences. It also amends various model clauses of petroleum licences granted pursuant to the 1998 Act or the Petroleum (Production) Act 1934. The amendments to model clauses are intended to ensure the more efficient management of the licence and to ensure that suspended petroleum wells are properly abandoned including;

a) a power of partial revocation of a licence in the event of, for example, the insolvency of one, but not all, of the persons constituting the licensee;•

b) a new obligation for the licensee to provide contact details to the Minister; and

c) a new power to require a licensee to plug and abandon a well which has been suspended for at least one month.

17. This part of the Act also extended the existing regime so that, if he intervened in a dispute over third party access, the Secretary of State would have the power to determine third party access rights to all upstream petroleum infrastructures.

Part 5: Miscellaneous

18. Part 5 updates the legislative framework to make it more appropriate for today's energy market through several specific policy measures:

- reform of transmission systems and industry codes to improve the allocation of access rights and the efficient use of the network;
- amendment to Ofgem's secondary duties to put sustainability and security of supply on an equal footing in the hierarchy of secondary duties;
- amendments to the existing statutory provisions imposing energy-related reporting obligations placed on the Secretary of State, that no longer remain valid or have been superseded;
- powers for SoS to modify electricity distribution and supply licences to require the licence holder to install or facilitate the installation of smart meters;
- transfer of certain statutory functions relating to gas and electricity meters from the Gas and Electricity Markets Authority (the Authority) to the Secretary of State;
- amendments to allow for up front charging in certain circumstances to enable Distribution Network Operators to recoup the costs of providing network connection offers;
- stronger sanctions where there is a breach of electricity safety standards and moving overall responsibility to the enforcement of safety regulation to one regulatory body;
- power to introduce a financial incentive mechanism for renewable heat – the Renewable Heat Incentive (RHI);
- amendments to ensure there are sufficiently serious sanctions available for those attempting to steal sensitive nuclear information;
- Application of general duties to functions relating to licences.

Part 6: General

19. The purpose of this Part is to define the territorial scope of provisions in the Act, set out requirements for making orders or regulations under the Act, contains minor and consequential amendments, commencement of provisions and define terms used in the Act.

IMPLEMENTATION

Part 1: Gas Importation and Storage

Chapter 1: Gas Importation and Storage Zones.

20. Chapter 1 of Part 1 was brought into force on 6th April 2009. Part 1, Chapter 1 (Section 1) of the Energy Act 2008 vests in Her Majesty the rights to exploit areas outside the territorial sea for gas importation and storage of gas and provides that Her Majesty may designate areas to which those rights are exercisable (a "Gas Importation and Storage Zone"). These rights so vested in the Crown arise under Part V of the United Nations Convention on the Law of the Sea (UNCLOS). Section 1(5) was substituted by the Marine and Coastal Access Act 2009, section 41(8), Schedule 4, Part 1, paragraph 5(1), (2).

21. Chapter 1 of Part 1 was brought into force by commencement order (See The Energy Act 2008 (Commencement No. 1 and Savings) Order 2009 (S.I. 2009/45).

Chapter 2: Importation and storage of combustible gas

22. Chapter 2 of Part 1 was brought into force on 13th November 2009. Chapter 2 (sections 2 to 16), of the Act provides for a licensing regime governing the offshore storage and unloading of combustible gas (in practice natural gas consisting mainly of methane). The regime applies to storage and unloading within the offshore area comprising both the UK territorial sea, and the area extending beyond the territorial sea that has been designated as a Gas Importation and Storage Zone.

23. The Objectives of Chapter 2 are:-

- To provide a prohibition on the offshore unloading of methane gas and for storage of methane gas without a licence from the Secretary of State
- To provide enabling powers for further Regulations on licence terms and conditions, powers of direction for the Secretary of State and other related matters

24. Chapter 2 of Part 1 was brought into force by commencement order (See Energy Act 2008 (Commencement No 4 and Transitional Provisions) Order 2009 (S.I. 2009/2809)

Chapter 3: Storage of Carbon Dioxide

25. Chapter 3 of Part 1 came into force on 6 April 2009 (see SI 2009/45). Sections 30A and 30B, which were inserted by the Energy Act 2011, came into force on 18 December 2011. Chapter 3 of Part 1was brought into force by The Energy Act (Commencement No.1 and Savings) Order 2009.

26. The EU Carbon Capture and Storage Directive (Directive 2009/31/EC) of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide ("the CCS Directive") is implemented by Part 1, Chapter 3 of the Energy Act 2008. The significant legislation that gives effect to the CCS Directive was substantially implemented by 2012.

27. This chapter of the Act establishes a licensing regime for the storage of carbon dioxide in areas within UK territorial waters, and in areas beyond those waters which have been designated as a Gas Importation and Storage Zone within the meaning of section 1(5) of the Act ("the offshore area").

28. Section 17 of the Act prohibits the storage of carbon dioxide (with a view to its permanent disposal) except in accordance with a licence granted under section 18. For that purpose, the licensing authority is either the Secretary of State or (for storage within territorial waters adjacent to Scotland) the Scottish Ministers. With the exception of regulation 9 these Regulations relate solely to licences granted by the Secretary of State ("the authority") for activities which take place in the offshore area (but wholly outside territorial waters adjacent to Scotland) and installations which are in the offshore area (but outside territorial waters adjacent to Scotland).

29. It also applies existing offshore legislation (for example the decommissioning legislation in the Petroleum Act 1998) to offshore structures used for the purposes of carbon dioxide storage.

Chapter 4: General Provisions about gas importation and storage

30. Chapter 4 of Part 1 was brought into force for certain purposes on 6th April 2009 and for remaining purposes on 13th November 2009. Section 36 introduces Schedule 1 which makes consequential amendments relating to Chapters 2 and 3.

31. Chapter 4 of Part 1 was brought into force by commencement orders (See the Energy Act 2008 (Commencement No. 1 and Savings) Order 2009 (S.I. 2009/45) and the Energy Act 2008 (Commencement No. 4 and Transitional Provisions) Order 2009 (S.I. 2009/2809).

Part 2: Electricity from renewable sources

The Renewables Obligation

32. Section 37 substitutes sections 32 to 32M in the Electricity Act 1989 in place of sections 32 to 32C. The new sections incorporate all amendments made to the Renewables Obligation (RO) in primary legislation since 2002, as well as the further additions and amendments proposed by the Energy Act 2008. Section 37 came into force on 26 November 2008 with the commencement of the Act. The powers provided by of section 37 have been used to make The Renewables Obligation Order 2009 (S.I. 2009/785) (ROO 2009) which came into force on 1 April 2009. The supplemental provisions in section 38(1) enable the requirement to consult under section 32L of the Electricity Act 1989 (as inserted by section 37) to be satisfied by a consultation which takes place before commencement of section 37 or the passing of the Energy Act 2008. In line with this provision, a consultation was held on a draft renewables obligation order before the 2008 Act received Royal Assent.

33. The main reforms introduced with respect to the scope and operation of a renewables obligation are summarised below.

34. Subsection (6) of new section 32 sets out the new obligation which may be imposed on electricity suppliers in the relevant part of Great Britain. Previously the obligation required specified electricity suppliers to provide evidence of the supply of a certain *quantity of electricity* from renewable sources. The ROO 2009 requires electricity suppliers to submit a certain *number of Renewable Obligation Certificates (ROCs)* during a specified period. The number of ROCs to be submitted is calculated annually in respect of the total amount of electricity of any kind (i.e. renewable or non-renewable) supplied by a given supplier in the relevant obligation period.

35. New section 32A enables an order to specify how the level of the obligation is to be set. The ROO 2009:

- specifies how the number of ROCs which an electricity supplier must produce to the Authority for a given period is to be calculated;

- allows scope to provide that ROCs issued in respect of electricity generated from different renewable sources or different types of generating station can only be used to discharge the obligation up to a certain number or a certain proportion of a supplier's obligation (this allows for a cap on the contribution made by particular technologies such as co-firing of biomass by coal-fired power stations);

- determines how the amount of electricity supplied by electricity suppliers to customers is to be calculated.

36. In accordance with subsection (3) of new section 32A, the ROO 2009 provides that suppliers cannot produce the same ROC more than once as evidence of complying with the obligation. The Order enables, among other things, suppliers to bank a specified number of ROCs acquired during a particular obligation period which can then be presented to the Authority in a

later obligation period. This power, which is made under subsection (6) of new section 32A, is to allow suppliers to hold over ROCs where, for example, for business process reasons they do not manage to present ROCs by the due date or if they have more ROCs than they need to meet their obligation for a given period.

37. Under the powers introduced by new section 32B, the ROO provides for the issue of ROCs by the Authority, sets out the criteria for their issue and what ROCs must certify. It also requires that ROCs issued by the Authority certify that the amount of electricity stated in the certificate is from a renewable source and that it has been supplied to customers in Great Britain or the part of Great Britain stated in the certificate. In addition, the ROO provides for ROCs to be issued in respect of total quantities of renewable electricity generated by more than one generator, which facilitates the issue of ROCs to agents acting for small generators. The ROO 2009 provides for ROCs to be issued where renewable electricity has been generated but not sold through a licensed supplier in accordance with subsection (3) of new section 32B so long as that electricity has been used in a permitted way, which is described in the Order.

38. In accordance with new section 32C the Order excludes specified renewable sources and categories of generating stations from eligibility for ROCs. It also limits stations generating electricity from a combination of fossil fuels and renewable sources, such as biomass or waste, to be able to claim for ROCs only for the proportion of electricity generated by the renewable source. The Order specifies how the renewable proportion is to be calculated.

39. New section 32D creates a new power to enable the Secretary of State, through the renewables obligation order, to set bands. Prior to this change, all technologies supported by the RO were eligible to receive the same of support for each Megawatt Hour of renewable electricity generated. The introduction enables different levels of support to be provided to different technologies and, in particular, enables the order to provide higher levels of support to incentivise less mature, emerging technologies. The ROO 2009

implemented banding for technologies supported by the scheme. Before doing so, and as required by the Act, the Secretary of State had regard to the requirements of section 32D of the Act as implemented by section 37 of the 2008 Act, namely:

a. the costs associated with generating electricity from renewable sources and the cost of transmitting or distributing that electricity;
b. the income that generators using renewable sources receive from generating electricity or from activities associated with the generation of electricity;
c. the impact of the exemption from the Climate Change Levy for those generators;
d. the likely impact of the proposed banding in securing the growth and development of renewables generation and associated industries;
e. the likely effect of the proposed banding on the number of ROCs issued by the Authority and the impact on the ROC market and on consumers;
f. the potential contribution of electricity generated from each of the various renewable sources to the attainment of any target relating to the generation of energy generally, or of electricity in particular, which arises from a target imposed by, for example, an EU Directive.

40. The ROO 2009 implements, in accordance with the powers subsections (7) and (8) of new section 32D, provides that after the first order with banding provision is made, any subsequent order with banding provision cannot be made except where a review of banding is carried out in accordance with the terms of the order. The Order authorises the Secretary of State to review the bands at intervals set out in the Order or where one or more specified conditions are met. The support bands have been comprehensively reviewed once since the ROO 2009 took effect. The conclusions of the first post-implementation banding review were published in 2012.

41. In accordance with powers provided by new section 32E, the ROO 2009 confirms the level of support for stations accredited under the RO before the

ROO 2009 was made. As provided for in subsections (4), (5) and (6) of new section 32E, the Order sets out the conditions which must be satisfied before the banding provisions apply to certain generating stations in respect of which a statutory grant has been awarded, including the repayment of grants and any interest accrued to the Secretary of State before a station can obtain the relevant enhanced level of ROC support.

42. The ROO 2009 implements the provisions of new section 32F by allowing an electricity supplier to discharge its renewables obligation by presenting Northern Ireland renewable obligation certificates issued by the Northern Ireland authority. The practical effect of this provision is that it allows the obligation in Great Britain to work alongside the obligation in Northern Ireland thereby providing a single market for ROCs across Great Britain and Northern Ireland.

43. In accordance with new section 32G, the ROO 2009 makes provision for electricity suppliers to discharge their obligation by paying a 'buyout' price to the Authority. The Order also allows electricity suppliers to discharge their obligation through late payments made to the Authority. The buyout price is determined according to provisions in the Order. As provided for in subsections (5) to (8) of new section 32G, the Order includes a power enabling the Authority to require electricity suppliers to make additional payments into a mutualisation find where there is a shortfall in the amount due into the buyout fund for a particular obligation period.

44. The ROO 2009 sets out, in accordance with provisions in new section 32H, how the buyout and late payment funds are to be handled. The main provisions relate to the redistribution of payments made to the Authority in respect of the buyout fund and late payment fund to electricity suppliers using an allocation system specified in the Order.

45. In accordance with new section 32I, the ROO 2009 makes provision for the Authority to recover its costs of administering the RO in England, Wales and Scotland from the buyout and late payment funds, and to make payments to

the Northern Ireland authority in respect of the costs incurred by that authority of administering the RO in Northern Ireland.

46. The ROO 2009 enables the Authority to require electricity suppliers and others (who may include electricity generators and agents acting on behalf of generators) to provide certain information in relation to their participation in the RO, as provided for by new section 32J. This includes information from operators of stations generating electricity wholly or partly from biomass to provide information relating to the biomass, the purpose of which is to enable the Authority to gather and publish information on sustainability. If generators fail to provide the information in the time and form specified, the ROO 2009 permits the Authority to postpone the issue of ROCs until such time as the information has been provided.

47. New section 32K enables the Order to make general provisions about a number of matters, including transitional provisions.

48. The new section 32M (1) sets out definitions. As part of the transposition of article 17(8) of the Renewable Energy Directive 2009/28/EC, the definition of "fossil fuel" was amended in 2011 to exclude bioliquids. A definition for "bioliquids" was also inserted.

49. In accordance with the provisions of subsection 2 of new section 32M (on interpretation), the ROO 2009 defines ‘waste’ and sets out how the fossil fuel element of wastes is to be determined.

Feed-in tariffs for small-scale generation of electricity

50. The Feed-in Tariff scheme was consulted on in summer 2009, following a recommendation in the Renewable Energy Strategy. The consultation response was published in February 2010, and the scheme was launched on 1 April 2010. The provisions of sections 41 to 43 of the Energy Act 2008 were implemented through;

- modifications to the Standard Licence Conditions of Electricity Supply Licences, came in to force on 1 April 2010 , implemented the Feed- in-Tariffs scheme by requiring licensed electricity suppliers to pay small-scale generators of renewable electricity at prescribed tariffs for the amounts of electricity that they generate and the amounts that they export to the distribution network; and
- the Feed-in Tariffs (Specified Maximum Capacity and Functions) Order 2010 (SI 2010/678), which set out the functions of the Secretary of State and the Gas and Electricity Market Authority ("the Authority") in administering the Feed-in-Tariff scheme.

51. Section 41 of the Act gives the Secretary of State the power to modify electricity supply and distribution licences (and associated documents) to introduce a "feed-in tariffs" scheme to encourage small-scale, low-carbon generation of electricity, and sets out factors and definitions to inform the design of the FITs scheme. Pursuant to section 41(4), it gives the Secretary of State the power to prescribe by order 'the specified maximum capacity' (which must not exceed 5MW) of small-scale, low-carbon generation plant that will be eligible for the Feed-in-Tariff scheme.

52. Section 42 of the Act sets out the procedural requirements to be followed when the Secretary of State exercises the powers in section 41, which include an obligation to consult holders of licences being modified, the Gas and Electricity Market Authority ("the Authority") and others he considers appropriate before making modifications.

53. Section 43 of the Act provides an order-making power for the Secretary of State to make provisions conferring functions on the Authority or the Secretary of State for the administration of a scheme created under section 41 of the Act.

Offshore Electricity Transmission

54. Section 44 and Schedule 2 insert sections 6D and 6E and Schedule 2A into the Electricity Act 1989 ("the 1989 Act"). Section 6D extends the regulation-making power in section 6C of the 1989 Act to enable the Gas and Electricity Markets Authority (referred to as "Ofgem") to recover its costs in running competitive tenders for offshore transmission licences. The current Regulations made under sections 6C and 6D of the Electricity Act 1989 are the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2013 (SI 2013/175), which came into force on 22 February 2013.

55. Section 6E and Schedule 2A enables Ofgem to make a scheme transferring property, rights and liabilities from the existing owner of an offshore transmission asset to the successful bidder for an offshore transmission licence. This power has not yet been used, but provides a backstop should commercial negotiations break down. The period during which an application may be made for a property transfer scheme was extended by a period of 12 years to 19th May 2025 by the Electricity (Extension of Transitional Period for Property Schemes) Order 2013 (SI 2013/968).

56. Section 44(3) inserts sub-sections (1A) and (1AA) into section 64 of the 1989 Act. These sub-sections define terms relevant to transmission lines running through offshore waters. It was brought into force for certain high voltage lines on 22 July 2010 and for all other purposes on 10 June 2014.

Part 3: Decommissioning of energy installations

Chapter 1: Nuclear sites: decommissioning and clean up.

57. Part 3, Chapter 1 of the Act came into force on 6 April 2009 (see the Energy Act 2008 (Commencement No. 1 and Savings) Order 2009 (S.I. 2009/45)).

58. Two key amendments have been made to Part 3, Chapter 1 of the 2008 Act since it came into force:

- In 2011, section 46 of Chapter 1 was amended to provide for the Secretary of State to enter into an agreement to fetter his discretion in relation to powers to amend the FDP. The Secretary of State may only enter into such an agreement if satisfied that it includes adequate provision for the modification of an Funded Decommissioning Programme (FDP) in the event that the provision made by it for the technical matters (including the financing of the designated technical matters) ceases to be prudent. The amending provision was brought in to force on 18th December 2011 (see section 121(3)(j) of the Energy Act 2011).
- A new section 45A was inserted into Chapter 1 by the Energy Act 2013. This provides that the Secretary of State can recover the costs of receiving advice on proposals from prospective nuclear site operators who are planning to submit an FDP. It enables the Secretary of State to recover costs of advice at an earlier stage than that previously permitted under the 2008 Act, ensuring the costs of getting such advice do not fall on the taxpayer. The amending provision was brought into force on 18th February 2014 (see section 149 of the Energy Act 2013).

Chapter 2: Offshore renewable installations

59. The provisions in chapter 2 sections 69 – 71 came into force on 6 April 2009 (SI 2009/45[i]). Sections 69 – 71 of the Energy Act 2008 ("the 2008 Act") amend Part 3, Chapter 2 of the Energy Act 2004 ("the 2004 Act") which introduced a statutory decommissioning scheme for offshore wind and marine energy installations (sections 105 to 114 of the 2204 Act). The purposes of the amendments were to strengthen this scheme.

60. Section 69 amends the decommissioning regime for offshore renewable energy installations as set out in the Energy Act 2004 by enabling the Secretary of State to serve a decommissioning notice on an associate of a developer requiring the associate to submit a decommissioning programme. This power can only be used if the Secretary of State is not satisfied that adequate arrangements have been made by the developer

61. Section 70 inserts a new section 110A (Protection of funds held for purposes of decommissioning) and a new section 110B (Directions to provide information about protected assets) into the Energy Act 2004. New section 110A applies to any security which has been provided in relation to the carrying out of an approved decommissioning programme or for compliance with the conditions of its approval and ensures that funds are available for decommissioning only and are not available to the general body of creditors. New section 110B is intended to ensure that creditors and potential future creditors are aware of any decommissioning funds protected by section 110A.

62. Section 71 inserts a new section 112A (Power of Secretary of State to require information and documents) to replace the information gathering provisions set out in section 105(9) of the 2004 Act. The new section allows the Secretary of State to require persons who are, or may in future be, subject to decommissioning obligations to provide certain information or documents to him to assist in the exercise of his functions in relation to the decommissioning of offshore renewable energy installations.

Chapter 3: Oil and Gas Installations

63. The new provisions in Chapter 3, which amend Part 4 of the Petroleum Act 1998, were brought into force on 26 January 2009.

64. Part 4 of the Petroleum Act 1998, which consolidated provisions from the Petroleum Act 1987, sets out the statutory scheme for the abandonment of oil and gas facilities. Under the abandonment regime, the Secretary of State can serve notices on those persons with an interest in an offshore installation or pipeline, requiring them to submit an abandonment programme for his approval. The parties to the programme are then responsible, jointly and severally, for carrying out the work.

65. Under the Petroleum Act 1998, the Secretary of State previously had a power to require parties to put in place financial security if he was concerned about their ability to carry out an abandonment programme, but this provision only applies once a programme has been approved. It is standard practice to draw up programmes at the end of the life of a field when there is greater certainty of available technologies. In circumstances where it becomes apparent that financial security was required during the earlier stages of field life, because there is doubt about the parties' ability to carry out a programme the Secretary of State could not previously require that security was put in place.

66. Since the regime was originally established in 1987 there have been changes in business practices in the oil and gas industry, such as increasing participation by smaller players which have fewer assets and as such bring increased risks that they might not be able to meet their decommissioning liabilities. Moreover, experience has shown that it has not always been possible to share liabilities equitably between the parties responsible for any installation or pipeline.

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Chapter 4: Wells

67. Chapter 4 came in to force on 26 January 2009, by the Energy Act 2008 (Commencement No.1 and Savings) Order 2009 (No. 45).

68. Section 75 empowers DECC to serve notice requiring specified action where necessary to ensure that the costs of the subsequent plugging and abandoning of a well will be covered.

Part 4: Provisions Relating to Oil and Gas

Petroleum licencing

69. Both section 76 and 77 were implemented on 26 January 2009, by the Energy Act 2008 (Commencement No. 1 and Savings) Order 2009 (No. 45).

70. Section 76 empowers DECC to reverse the assignment of a licence granted under the Petroleum (Production) Act 1934 or the Petroleum Act 1998, if the Secretary of State has not consented to it. That provides a more proportionate response than complete revocation of the licence, which was the only recourse available to DECC before. It also provides a gateway by which HMRC may inform DECC of such an unconsented assignment.

71. Section 77, together with Schedule 3, amends the secondary legislation containing model clauses which apply to licences granted under the Petroleum (Production) Act 1934 or the Petroleum Act 1998. It has the effect that new clauses, and the amendments to existing clauses, will be included in relevant licences from the date that the particular provisions set out in the Schedule come into force.

72. Section 76 includes provisions to provide contact details to the Minister; in relation to the person to whom notices, directions and other documents under the licence are to be sent; and notices sent there are to be treated as though they had been served upon each party to the licence.

73. Section 77, Power of partial revocation; where the licence is held by more than one person and one person or persons can clearly be identified as giving rise to the grounds for revocation (i.e. insolvency or change of control), the Secretary of State is now able to revoke in respect of just that one party. This is a more proportionate alternative, than complete revocation of the entire licence.

Third Party Access

74. Sections 78 to 82 of the 2008 Act made modifications to the regime for resolving disputes over third party access to upstream petroleum infrastructure. The regime including the changes introduced by the 2008 Act was comprehensively revised by sections 82 to 91 of Energy Act 2011 (the 2011 Act). Sections 80 to 82 of the 2008 Act were repealed and sections 78 and 79 were rendered ineffective by the other amendments or repeals made

in Schedule 2 to the 2011 Act. The relevant provisions of the 2008 Act were invoked but proved in practice to be ineffective so were never used to make a determination.

Part 5: Miscellaneous

Duties of Gas and Electricity Markets Authority (GEMA)

75. The provisions of the Act came into force on 26 January 2009 SI 2009/45. Gas and Electricity Markets Authority's remit was updated accordingly.

76. The Energy Act 2008 makes two notable changes to the statutory duties of Gas and Electricity Markets Authority and SoS.

77. The first amendment introduces the concept of future consumers alongside existing consumers in the principal objective set out in the sections of 4AA of the Gas Act 1986 and 3A of the Electricity Act 1989.

78. The principal objective requires the SoS and GEMA in carrying out their functions to protect the interests of consumers wherever appropriate by promoting effective competition. This section emphasises to have equal regard to future and current consumers.

79. The second amendment introduces a new provision requiring the SoS and GEMA to have regard for the need to contribute to the achievement of sustainable development. This increases prominence and weight of this duty which was first introduced through the Energy Act 2004.

Transmission Systems

80. Sections 84-86 of the Energy Act 2008 provides powers to enable the Secretary of State to make changes to industry codes and licences to facilitate access to the electricity transmission system. At that time, getting access to the electricity transmission network was a major barrier to new renewable and other generation and, despite detailed consideration by the

industry governance process, no timely solution to this issue had been achieved. It was therefore announced on 15th July 2009 that the Energy Act powers would be exercised in order to see the grid access reform process that had been started by industry through to a successful conclusion.

81. Following public consultation on a preferred model for enduring grid access reform, the then Secretary of State commenced his statutory powers on 29th July 2010[1], and wrote to code and licence holders to effect the necessary changes. These changes implemented the enduring 'Connect and Manage' grid access regime, ensuring that new generation can secure firm access dates in an appropriate timeframe. The relevant industry codes and licences modifications have been effective from 11th August 2010.

Energy Reports

82. Section 1 of the Sustainable Energy Act 2003 requires the Secretary of State to report annually on progress towards sustainable energy aims. The four aims are:

(a) cutting the United Kingdom's carbon emissions;
(b) maintaining the reliability of the United Kingdom's energy supplies;
(c) promoting competitive energy markets in the United Kingdom;
(d) reducing the number of people living in fuel poverty in the United Kingdom.

83. Section 87 of the Act changes the reporting period from 24 February until 23 February each year, to each year beginning with 1 January and ending with 31 December, and as a consequence of this changes the publication date of the report. It also removes the requirement to include detail on specific energy sources and technologies.

84. The provision came into force on 26 January 2009.

[1] The Energy Act 2008 (Commencement No. 5) Order 2010

85. Following those changes, the first report published was the Sustainable Energy Report[2] which was laid before Parliament in October 2010. That report reported on progress made against these requirements in 2009.

86. In May 2010, the Coalition 'Programme for Government' stated that the Government would give an Annual Energy Statement to Parliament which would set out strategic energy policy and guide investment.[3]

87. The first Annual Energy Statement[4] was laid before Parliament on 27 July 2010 and subsequent Annual Energy Statements have been made each year, the most recent being presented to Parliament in October 2013[5]. The Annual Energy Statement contains reporting on DECC's policy and performance on the sustainable energy aims above in the previous year.

Smart Meters

88. Sections 88-90 of the Energy Act 2008 came into force on 26 November 2008. This section of the Act give the Secretary of State powers to modify the existing regulatory framework (specifically industry licences and codes as well as provisions in the Electricity Act 1989 and Gas Act 1986) in relation to the provision, installation or operation of meters of a particular kind, as well as setting out the procedures that must be complied with in order to exercise these powers.

[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf
[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf

[4] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/47879/237-annual-energy-statement-2010.pdf

[5] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254250/FINAL_PDF_of_AES_2013_-_accessible_version.pdf

89. Section 91 of the Act enables the Secretary of State to create new licensable activities in relation to providing, installing or operating smart meters or related infrastructure under the Gas and Electricity Acts by affirmative order.

90. The Government set out its commitment to the roll-out of smart meters within its 2010 coalition programme[6]. In July 2010, DECC and Ofgem published a consultation on the Smart Metering Implementation Programme Prospectus (the 'Prospectus Consultation'). This contained proposals for how smart metering would be delivered, including design requirements for central communications and data management and the approach to the roll-out of smart meters.

91. DECC and Ofgem published the response to the Prospectus Consultation in March 2011 (the 'Prospectus response') The Response concluded that energy suppliers would be responsible for the roll-out of smart meters. Given the need to replace approximately 53 million meters across over 30 million homes and businesses it was clear that this would need to take place over a number of years. Sections 88-91 of the Energy Act 2008 were due to expire in November 2013 but were extended to 2018 under Section 73 of the Energy Act 2011 to provide for the appropriate range of powers during the anticipated course of the roll-out.

92. The Prospectus Response also set out how the overall approach to the Smart Metering Implementation Programme (the 'Programme') would be supported through regulation, using powers in the Energy Act 2008 to make modifications to existing energy licences and codes.

93. The changes to these licences and codes have been phased in tranches of regulation to give businesses and other stakeholders the time to input and influence the detail of the regulatory framework through individual and detailed consultations. These tranches are summarised below.

[6] HMG, *'The Coalition: Our programme for government'*, 2010.

a. *Tranche 1 (came into effect on 30 Nov 2012).* This initial set of regulations mandated the roll-out of smart meters by energy suppliers and the establishment of a code of practice for the installation of Smart Meters. The Government also defined functional requirements that new Smart Meters must deliver and put in place the regulation required to appoint a monopoly provider of communications and data services to energy suppliers under licence, the Data and Communications Company (DCC)

b. *Tranche 2 (came into effect on 4 March 2013).* This tranche set out energy supplier and energy network licence modifications in relation to consumer engagement, data access, reporting and security risk assessments and audits in the period before DCC provides services.

c. *Tranche 3 (came into effect on 14 July 2013).* This tranche introduced energy supplier and energy network licence conditions to support the creation of a new industry code called the Smart Energy Code (SEC). It also placed requirements on energy suppliers to ensure that smart meters make key data available to domestic and micro-business consumers, and that key smart meter functions are switched on.

94. The introduction of these first three tranches supported the establishment of the enduring commercial and regulatory framework for smart metering. In September 2013 Smart DCC Ltd, a wholly owned subsidiary of Capita PLC, was awarded the licence to provide smart metering communication services (the 'DCC Licence'). This award and commencement of the DCC Licence introduced a new licensed entity into the energy market.

95. Following the award of the DCC Licence, the Government designated the first stage of the Smart Energy Code (SEC). SEC content is being introduced in stages, so that it is in place when the DCC and users of its services need it. The designated version of the SEC was introduced to deal with matters that were required to support the initial operations of the DCC. Further stages

have being introduced together with amendments to industry licences where appropriate.

d. *Tranches 4 and 5 (various dates for coming into effect, starting on 31 March 2014).* These tranches included new supply licence conditions to ensure consumer access to data as required by the Energy Efficiency Directive (2012/27/EU) and to support 'Smart Change of Supplier'. They also contained changes to energy supply licence conditions related to the mandated roll-out of smart metering. These tranches also introduced further content to the SEC and amendments to the DCC Licence principally concerning the development and financing of DCC services.

e. *Tranches 6 and 7 (under consultation)*. These will introduce into the SEC the majority of outstanding core content required to support testing and live operations of DCC services. Energy supplier licence amendments will also be introduced relating to smart meter equipment technical specifications.

96. The powers under the 2008 Energy Act continue to be used where it is necessary to deliver the roll-out in a way that meets the Government's objectives and optimises the Programme benefits.

Gas Meters and Electricity Meters

97. Sections 92-96 of the Act came in to force on 1 April 2009.

98. Sections 92-93 of the Energy Act 2008 transfer the functions of GEMA under (a) section 17 of the Gas Act 1986 (meter testing and stamping); and (b) various specified gas meter regulations to the Secretary of State – parent department of the National Weights and Measures Laboratory (now known as National Measurement Office).

99. Sections 95-96 of the Energy Act 2008 transfer the functions of GEMA under (a) Schedule 7 of the Electricity Act 1989 (restrictions on use of electricity

meters); and (b) various specified electricity meter regulations to the Secretary of State.

Connection Offer Expenses

100. Section 98 of the Energy Act 2008 came in to force on 26th January 2009. It amends section 16A of the Electricity Act 1989 so as to allow the Secretary of State, after consulting Ofgem, to make regulations entitling an electricity distributor to require a person requiring a connection in pursuance of Section 16 (1) of the Electricity Act 1989 to pay "connection offer expenses", as defined in the amended section 16A of the Electricity Act 1989.

101. Until 2008, Distribution Network Operators charged persons making connection requests up front for the costs incurred when providing network connection offers. However, following a complaint lodged with the Gas and Electricity Markets Authority (Ofgem) about this practice, Ofgem has since taken the view that the Electricity Act 1989 only permits Distribution Network Operators to recover these costs if an actual connection to the network was made.

102. Since this issue came to light, the Authority has required Distribution Network Operators to change their charging methodologies to remove all elements of up front charging and bring them in line with the statutory arrangements. However, in instances where connection offers are made but no connection is established, the Distribution Network Operators are either unable to recoup all of their costs or recoup these costs by socialising these costs through connection offers that do result in a connection.

103. Government is currently working with industry (e.g. the Energy Networks Association) to assess the case for introducing these regulations. These discussions are on-going. The Energy Networks Association delivered a business case to DECC in August 2013 however DECC asked the ENA to give firmer evidence to support of their business case and they held a

stakeholder workshop on 6 June 2014. The ENA is now considering the outcomes and will report back to DECC with a revised business case.

Electricity Safety

104. The purpose of Section 99 of the Energy Act 2008 is to enable the permanent transfer of responsibility for the safety aspects of section 29 Electricity Act 1989- and the Electrical Safety Quality and Continuity Regulations 2002 (ESQCR) made under it-from DECC to HSE, in particular by allowing HSE to amend the safety aspects of ESQCR via secondary legislation.

105. Section 99 was not commenced because, since 2006, there has been an agency agreement ("AA") in place enabling HSE to enforce some aspects of ESQCR on behalf of the Secretary of State. In view of the government's policy to reduce the amount of secondary legislation on the statute book it was decided not to commence section 99; however, the effectiveness of these arrangements are kept under review in case the additional flexibility of the powers given under s99 are considered necessary.

106. The AA is also supported by a Memorandum of Administrative Arrangements (MoAA). The AA allows industry to report to HSE as a single regulator on public and employee safety matters relating to the electricity sector, rather than having to report separately to DECC or HSE.

107. The responsibilities under ESQCR are currently split between HSE and DECC as follows:

- HSE's responsibilities: The public safety aspects of ESQCR, including the appointment of inspectors under Regulation 30 and receiving notification of specified events (i.e. safety incidents) under Regulation 31.
- Responsibilities remaining with DECC: Enforcement of the quality and continuity aspects of the ESQCR (including investigation of incidents reported under Regulation 32); handling public inquiries, and wayleave and tree-

lopping hearings relating to the contested infrastructure development proposals of electricity and gas companies.

Renewable Heat Incentives

108. Section 100 came in to force on 26 January 2009 and the Renewable Heat Incentive opened on 28th November 2011 for non-domestic applicants in England, Scotland and Wales. A similar scheme was opened to the non-domestic market in Northern Ireland on 1st November 2012. The domestic RHI opened to the domestic market in England, Scotland and Wales on 9th April 2014.

109. Section 100 gives the Secretary of State powers to make regulations to establish a scheme to facilitate and encourage renewable generation of heat, as well as make provisions regarding the administration and financing of the scheme.

110. This specifically includes provision for the Secretary of State or Authority to make payments under such a scheme to the owner of a plant used for the renewable generation of heat, as well as a producer of biogas or biomethane and a producer of biofuel for generating heat. Furthermore, it enables designated fossil fuel suppliers to be required to make such payments to cover the incentivisation of renewable heat.

111. The need to incentivise a range of different technologies in a variety of building types and situations necessitated the development of complex tariff calculations and a robust policy, to ensure effective incentivisation as well as value for money.

112. One element of section 100 of the Act that has not been pursued is the powers in paragraphs (a) and (d) to (g) of subsection (2) which enable the RHI to be funded through a levy on energy suppliers. Whilst this option was included as a possibility in the original consultation document, it was the

decision of the current Government to fund the RHI through general taxation and not pursue this avenue of funding.

113. The second element of section 100 not to be pursued is the powers in paragraph (a) of subsection (2) which enable RHI payments to be made to the producers of biofuels. In practical terms, this could enable DECC to incentivise the production of bioliquids for use as an alternative to oil in boilers.

114. The Government's position is that any support for bioliquids should not divert feed stocks suitable for use in transport from that sector and should ensure any fuel is sustainable and does not have any adverse land use impacts. However, DECC continue to believe that sustainable non-transport bioliquids may be able to make a contribution to the renewable energy targets and are conducting further work and gathering more evidence on this as part of our 2014/15 non-domestic RHI review process.

115. The Gas and Electricity Markets Authority (GEMA) is responsible for implementing and administering the RHI scheme on behalf of DECC. This is delivered through Ofgem E-Serve, the executive arm of GEMA responsible for delivering environmental programmes.

116. The role of Ofgem is to administer the application and payment processes for the scheme, and to set guidance for potential applicants based on the legislation governing the RHI. Payments are determined using a tariff system, whereby different technologies receive a set amount of money per kilowatt hour of eligible renewable heat generated (or, in the case of biomethane, per kilowatt of biomethane injected into the grid).

117. In the non-domestic scheme, payments are made on a quarterly basis over 20 years. For the domestic scheme, payments will be made on a quarterly basis for seven years, although the tariffs have been set at a level that reflects the expected cost of renewable heat generation over 20 years.

118. The non-domestic RHI is open to businesses, industry, public sector and not-for-profit organisations, as well as district heating systems where one installation provides heat for a number of homes or buildings. The domestic RHI covers single domestic dwellings only and is open to owner-occupiers, private landlords, social landlords and self-builders.

Nuclear information

119. Section 101 was commenced on 26th January 2009 by the Energy Act 2008 (Commencement No. 1 and Savings) Order 2009

120. Section 101 of the Energy Act 2008 inserts a new section 80A into the Anti-Terrorism, Crime and Security Act 2001, which deems places where equipment or information relating to uranium enrichment is held to belong to or to be used for the purposes of the Crown for the purposes of section 3(c) of the Official Secrets Act 1911 ("the 1911 Act").

121. This provision means those places can be declared prohibited places by an order made under section 3(c) of the 1911 Act This enables the application of the offences and penalties in the 1911 Act and the Official Secrets Act 1920 to places where uranium enrichment technology is held, which reflects the potential national security implications of any attempt to access that technology or information for the specified purposes.

122. No orders declaring prohibited places have yet been made. However it is still the Government's intention to utilise the power at an appropriate time in the future.

123. Security in the civil nuclear sector is kept under constant review as part of a continuous process to ensure existing arrangements are robust and effective

Application of General Duties

124. Section 92 provides that in exercising any of the powers under this Act to amend licences granted under the Electricity Act 1989 and Gas Act 1986, the Secretary of State is bound by the general duties set out in Part 1 of each of those Acts. It thus ensures consistency with the existing statutory framework for the electricity and gas sectors.

125. Subsections (2) and (4) specify that these general duties apply when the Secretary of State is exercising his modification powers under the following sections:

- Sections 41 to 43, in relation to the introduction of a Feed-In Tariff for small scale low carbon electricity generation;
- Sections 84 to 86, in relation to directing changes to electricity transmission system licences and codes with the aim of helping to ensure timely and efficient access for electricity generation projects, including renewables;
- Sections 88 to 91, in relation to the introduction of smart meters; and
- Sections 95 and 98 in relation to recovering from licensees the costs of meter accuracy services for which the Secretary of State is taking over responsibility from the Gas and Electricity Markets Authority.

126. Information on when and how the above provisions of the Act have been brought into operation can be found in the relevant sections throughout the memorandum.

Part 6: General supplementary provisions

127. Sections 103 to 112 inclusive define the territorial scope of provisions in the Act, sets out requirements for making orders or regulations under the Act, contains minor and consequential amendments, commencement of provisions and defines terms used in the Act.

SECONDARY LEGISLATION

Part 1: Gas Importation and Storage

Chapter 1: Gas Importation and Storage Zones

128. The Exclusive Economic Zone Order 2013 (SI 2013/3161) was made under section 1 of the Energy Act 2008. That Order designates the area of the Gas Importation and Storage Zone, an area beyond the United Kingdom's territorial sea, in which the following exclusive rights are vested in the Crown under section 1 of the Energy Act 2008:

- the exploitation of that area for the unloading of gas to installations or pipelines;
- the exploitation of that area for the storing of gas or the recovery of that stored gas;
- the exploration of that area with a view to its exploitation as referred to above.

129. These rights arise under Part V of the United Nations Convention on the Law of the Sea (UNCLOS).

130. The Gas Importation and Storage Zone (Designation of Area) Order 2009 was made under section 1 but has been revoked. The UK has made a number of similar Orders declaring our rights under the Exclusive Economic Zone provisions of UNCLOS such as a Renewable Energy Zone and others.

Chapter 2: Importation and storage of combustible gas

131. The Offshore Gas Storage and Unloading (Licensing) Regulations 2009 (SI 2009/2813) made under Chapter 2 establish the exclusive licensing regime for the offshore storage and unloading of combustible gas. In particular these Regulations lay down model clauses (terms and conditions) for a category of licence granted under section 4 of the 2008 Act. Model clauses are deemed to be incorporated into the licences for which they are prescribed, unless the Secretary of State decides to exclude or modify them in any particular case.

132. The Offshore Exploration (Petroleum, and Gas Storage and Unloading) (Model Clauses) Regulations 2009 (SI 2009/2814) also made under Chapter

2 prescribe model clauses (terms and conditions) for offshore exploration licences granted under section 3 of the Petroleum Act 1998 ("the 1998 Act"), and under section 4 of the Energy Act 2008 ("the 2008 Act"). These joint powers have been used to allow for exploration for petroleum production and gas storage or unloading activities in duality as the holder of the licence may be collecting seismic or core data on both in order to sell to potential developers. Unless the Secretary of State decides to exclude or modify them in any particular case, such clauses are deemed to be incorporated into the relevant licences.

133. The licences in question will enable the holder to undertake the exploration of the entire offshore area below the low-water line, out to the seaward limits of the United Kingdom Continental Shelf and Gas Importation and Storage Zone, but only by means of such relatively non-intrusive methods as seismic surveys and shallow drilling. In order to obtain the right to explore particular areas by more intrusive means (such as deep drilling below 350 metres) it will be necessary to obtain a separate licence under section 3 of the 1998 Act, or section 4 of the 2008 Act.

Chapter 3: Storage of Carbon Dioxide

134. Details of the significant legislation implemented under this Chapter are as follows:

135. **The Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 (SI 2010/2221).** These Regulations make provision for implementing Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide ("the Directive"). They also make provision for implementing an amendment to Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage ("the Environmental Liability Directive").

136. These Regulations do not apply to the category of licence which authorises the exploration of the offshore area generally, by means of such relatively non-intrusive methods such as seismic surveys and shallow drilling. Such licences will be issued in conjunction with the corresponding licences granted under section 4 of the Act and section 3 of the Petroleum Act 1998.

137. The Storage of Carbon Dioxide (Termination of Licences) Regulations 2011 (SI 2011/1483). These Regulations form part of the implementation by the United Kingdom of Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide (OJ No L 140, 5.6.2009, p 114) ("the Directive"). In particular, they implement Articles 18 and 20 on the transfer of responsibility for a closed storage site and the associated financial mechanism.

138. The Directive is chiefly implemented by Part 1, Chapter 3 of the Energy Act 2008 and by the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 (S.I. 2010/2221) and the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011 (S.S.I. 2011/24) (together the "licensing regulations").

139. The Storage of Carbon Dioxide (Amendment of the Energy Act 2008 etc.) Regulations 2011 (SI 2011/2453). These Regulations form part of the implementation by the United Kingdom of Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide (OJ No L 140, 5.6.2009, p.114) ("the Directive").

140. The Regulations extend the territorial scope of Part 1, Chapter 3, of the Energy Act 2008 (c. 32) ("the Act") to all parts of England, Wales, Northern Ireland and their internal waters. As enacted, that Chapter applied to the United Kingdom territorial sea and the Gas Importation and Storage Zone referred to in section 1 of the Act (designated by S.I. 2009/223). The Regulations also implement Article 31 of the Directive which amends Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ No L 175,5. 7.1985, p. 40).

141. The extension of Part 1 to all parts of Scotland and its internal waters is made by the Energy Act 2008 (Storage of Carbon Dioxide) (Scotland) Regulations 2011 (S.S.I. 2011/224) (the "Scottish Regulations").

142. The Storage of Carbon Dioxide (Inspections etc.) Regulations 2012 (SI 2012/461). These Regulations form part of the implementation by the United Kingdom of Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide (OJ No L 140, 5.6.2009, p.114.) ("the Directive"). In particular, they implement Article 15 of the Directive on the inspection of carbon dioxide storage complexes.

143. The Directive is chiefly implemented by Part 1, Chapter 3 of the Energy Act 2008 (c.32) and by the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 (S.I. 2010/2221) (the "2010 Regulations"), which are amended by these Regulations.

144. The relevant provisions were amended by the following secondary legislation:

- The Storage of Carbon Dioxide (Amendment of the Energy Act 2008 etc.) Regulations 2011 (SI 2011/2453);
- The Energy Act 2008 (Storage of Carbon Dioxide) (Scotland) Regulations 2011 (SSI 2011/224) ;
- For completeness, they were also amended by the Energy Act 2011 and the Marine and Coastal Access Act 2009.

145. Secondary legislation made under the relevant provisions:

- The Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 (SI 2010/2221) ;
- The Storage of Carbon Dioxide (Inspections etc.) Regulations 2012 (SI 2012/461) ;
- The Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011 (SSI 2011/24) ;

- The Storage of Carbon Dioxide (Licensing etc.) (Scotland) Amendment Regulations 2011 (SSI 2011/457);
- The Storage of Carbon Dioxide (Termination of Licences) Regulations 2011(SI 2011/1483);

Chapter 4: General provisions about gas importation and storage

146. Not applicable. Section 36 introduces Schedule 1 which makes consequential amendments relating to Chapters 2 and 3.

147. Paragraphs 1 to 3 of the Schedule amend section 7A of the Food and Environment Protection Act 1985 ("FEPA"), which excludes certain matters relating to offshore pipelines and installations from the requirements of Part 2 of FEPA (which regulates deposits in the sea and under the seabed), and make a consequential amendment to section 24.

148. Paragraph 4 amends the provisions of the Petroleum Act 1987 relating to automatic establishment of safety zones, to ensure that such zones are also established around all installations used for the purposes of the activities under Chapter 2 of Part 1.

149. Paragraph 5 amends the Gas (Northern Ireland) Order 1996 to exclude gas storage facilities in the Northern Ireland territorial sea from the definition of "gas storage facilities".

150. Paragraph 6 and 7 amends section 11 of the Petroleum Act 1998 to ensure that the power to apply civil law (such as the law of tort) to offshore installations extends to all installations used for the purposes of Chapter 2 and Chapter 3 of Part 1.

151. Paragraph 8 amends section 13 of the Petroleum Act 1998 to provide that the boundary of internal waters or territorial sea adjacent to Scotland is determined in accordance with provision made by an Order in council under the Scotland Act 1998.

152. Paragraph 9 amends the definition of "gas" for the purposes of Part 3 of the Petroleum Act 1998, in order to ensure consistency with the definition in section 2 of this the Energy Act 2008 (which defines the kinds of gases that are licensable for offshore gas storage and unloading).

153. Paragraph 11 amends section 44 of the Petroleum Act 1998 to ensure that the provisions of Part 4 of that Act (which relate to the decommissioning of offshore installations including for example, obligations to remove the facilities completely after the permanent cessation of the facilities' operations) apply to all installations used for the purposes of activities under Chapter 2 of Part 1. Paragraph 10 makes a corresponding amendment to section 30, which sets out who will be required to submit a programme for such decommissioning to the Secretary of State. Similar provision is made, for the purposes of Chapter 3 of Part 1.

154. Paragraph 12 amends section 47A of the Petroleum Act 1998, which was inserted by the Energy Act 2004. At present, that section enables the Secretary of State to have regard to matters connected with the offshore generation of electricity (for instance by means of wind farms) in exercising functions under the Petroleum Act 1998. The amendment made by this paragraph will permit the Secretary of State to have regard also to activities licensed under Chapter 2 or 3 of Part 1.

155. Paragraphs 13 amends section 188 of the Energy Act 2004 to ensure that regulations made under that section can impose charges to fund the Secretary of State's functions in connection with activities under Chapters 2 and 3 of Part 1.

Part 2: Electricity from Renewable Sources

The Renewables Obligation

156. The Renewables Obligation Order 2009 (S.I. 2009/785), made pursuant to section 37 of the Act, came into effect on 1 April 2009. The Order imposes an

obligation ("the renewables obligation") on all electricity suppliers licensed under the Electricity Act 1989, to produce a certain number of renewables obligation certificates in respect of each megawatt hour of electricity that each supplies to customers in England and Wales during a specified period known as an obligation period (articles 5 to 13). It also "bands" the different technologies that are used to generate electricity from renewable sources, meaning that the number of certificates that will be issued in respect of that electricity depends on the way in which that electricity has been generated. The renewables obligation is administered by the Gas and Electricity Markets Authority ("the Authority") who issue renewable obligation certificates to renewable electricity generators on their renewable output. These certificates are sold to electricity suppliers with or without the associated renewable electricity. Alternatively, instead of producing the required number of certificates in respect of all or part of their renewables obligation, a supplier is permitted to make a payment to the Authority (articles 43 and 44). The 2009 Order (with respect to England and Wales) has been amended by the following instruments:

- The Renewables Obligation (Amendment) Order 2010 (S.I. 2010/1107), which came into force on the 1st of April 2010;
- The Renewables Obligation (Amendment) Order 2011 (S.I. 2011/984), which came into force on the 1st of April 2011;
- Paragraph 29 of Schedule 4 to The Waste (England and Wales) Regulations 2011 (SI 2011/988), which came into force on the 29th of March 2011;
- The Renewables Obligation (Amendment) Order 2013 (S.I. 2013/768), which came into force on the 1st of April 2013;
- The Renewables Obligation (Amendment) Order 2014 (S.I. 2014/893), which came into force on the 1st of April 2013.

Feed-in tariffs for small-scale generation of electricity

157. The Feed-in Tariffs (Specified Maximum Capacity and Functions) Order 2010 (SI 2010/678) ("the 2010 Order"), made pursuant to section 43 of the Act,

came into force on 1 April 2010. It applied to Great Britain, and made provision to confer functions on the Authority and the Secretary of State in connection with the administration of the Feed-In-Tariff scheme. The 2010 Order was amended by the following instruments:

- Feed-in Tariffs (Specified Maximum Capacity and Functions) (Amendment) Order 2011 (SI 2011/1181), which came into force on 30 May 2011;
- Feed-in Tariffs (Specified Maximum Capacity and Functions) (Amendment No.2) Order 2011 (SI 2011/1655), which came into force on 1 August 2011;
- Feed-in Tariffs (Specified Maximum Capacity and Functions) (Amendment No.3) Order 2011 (SI 2011/2364), which came into force on 18 October 2011;
- Feed-in Tariffs (Specified Maximum Capacity and Functions) (Amendment) Order 2012 (SI 2012/671), which came into force on 1 April 2012;
- Feed-in Tariffs (Specified Maximum Capacity and Functions) (Amendment No. 2) Order 2012 (SI 2012/1393), which came into force on 1 August 2012;
- Feed-in Tariffs (Specified Maximum Capacity and Functions) (Amendment No. 3) Order 2012 (SI 2012/2268), which came into force on 1 October 2012.

158. The 2010 Order was revoked and remade by the Feed-in Tariffs Order 2012 (SI 2012/2782), which came into force on 1 December 2012. The Feed-in Tariffs Order 2012 was amended by the Feed-in Tariffs (Amendment) Order 2013 (SI 2013/1099), which came into force on 1 July 2013.

159. The modifications made to electricity supply licences under section 41 of the Act ("the Feed-In-Tariff licence modifications"), came into force on 1 April 2010, and have been further amended as follows:

- Modifications to the Standard Licence Conditions of Electricity Supply Licences (2011), which were made in July 2011;
- Modifications to the Standard Licence Conditions of Electricity Supply Licences (No 1 of 2012), were made in March 2012;
- Modifications to the Standard Licence Conditions of Electricity Supply Licences (No 2 of 2012), were made in March 2012;
- Modifications to the Standard Licence Conditions of Electricity Supply Licences (No. 3 of 2012), which came into force on 1 August 2012;
- The Modifications to the Standard Licence Conditions of Electricity Supply Licences (No 3 of 2012), were made in July 2012;
- The Modifications to the Standard Licence Conditions of Electricity Supply Licences (No 4 of 2012), came into effect in December 2012;
- The Modifications to the Standard Licence Conditions of Electricity Supply Licences 2013, which came into effect on 1 July 2013.

Offshore electricity transmission

160. Legislation implemented under this section includes: The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2013 (SI 2013/175) set out the process for competitive tenders that will apply to the grant of offshore transmission licences.

161. The Electricity (Extension of Transitional Period for Property Schemes) Order 2013 (SI 2013/968) extended the period during which an application for a property scheme under Schedule 2A of the Electricity Act 1989 can be made by a period of 12 years to 19th May 2025.

Part 3: Decommissioning of Energy Installations

Chapter 1 – Nuclear sites: decommissioning and clean-up

162. A range of secondary legislation, as well as guidance, has been made under Part 3, Chapter 1 of the 2008 Act.

163. The Nuclear Decommissioning and Waste Handling (Designated Technical Matters) Order 2010 (S.I. 2010/2850) specifies designated technical matters for the purposes of section 45(6)(a) of the Energy Act 2008[7]. A nuclear site operator must prepare and submit a Funded Decommissioning Programme (FDP) to the Secretary of State and that programme must contain estimates of the costs in connection with the designated technical matters and the funding of those costs.

164. The Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2011 (S.I. 2011/134) set out requirements relating to the costs payable to the Secretary of State for obtaining expert advice in relation to an FDP; the information that must accompany its submission or on a proposal to modify it; reporting requirements; circumstances in which the Secretary of State may rely on verification reports; and arrangements for certain modifications to an FDP to be made without Secretary of State approval.

165. The Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2013 (S.I. 2013/126) ("the 2013 Regulations") revoke and replace those made in 2011 and include a number of new requirements.[8] These reflect the practical needs of developing a FDP and are part of the learning process involved in implementing the 2008 Act.

166. The 2013 Regulations enable the Secretary of State to charge the nuclear site operator for costs incurred in considering information provided in support of

[7] The Order provides that the designated technical matters are (a) the construction and maintenance of an interim store; and (b) any activity preparatory to the decommissioning of a relevant nuclear installation and the cleaning up of the site.

[8] The 2013 Regulations were subsequently amended in response to a report from the Joint Committee for Statutory Instruments identifying a technical drafting error. The Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2013 (S.I. 2013/1875), which came into force on 22nd August 2013, corrected this error.

the FDP. They also make changes to the reporting requirements. The first criticality report commences the cycle of five yearly reporting so it does not take place during the installation's construction, making the provision of reports better aligned with company annual reporting cycles.

167. The 2013 Regulations require a review of compliance with the FDP for the first criticality report and each subsequent quinquennial report stage. The operator must include a statement of future payments into any fund, and details of any other future financial provision it must make in accordance with its FDP, to give greater financial oversight for the Secretary of State. Key reports by the nuclear site operator must be submitted to independent technical and financial verifiers. The permitted range of exempt modifications is extended, with appropriate safeguards and both technical and financial verifiers are required to consider whether the operator is complying with its FDP obligations.

168. The Nuclear Decommissioning and Waste Handling (Finance and Fees) (Amendment) Regulations 2014 ("the 2014 Regulations") rely on new enabling powers made to the 2008 Act by the Energy Act 2013. We expect these regulations to come into force in the second half of 2014.

169. The 2014 Regulations will enable the Secretary of State to recover costs incurred by DECC for advice received for the purposes of entering into a Waste Transfer Contract or Section 46 Agreement between the Secretary of State and a nuclear site operator (the agreement referred to above where the Secretary of State agrees to fetter his discretion); as well as for costs incurred by the Secretary of State for advice received prior to the submission of the FDP i.e. for the period between a notification by the nuclear site operator of its intention to submit an FDP and the submission date.

170. The Funded Decommissioning Programme Guidance for New Nuclear Power Stations (published December 2011) provides information on the preparation, content, modification and implementation of a FDP. In accordance with the requirement at section 54(5) of the 2008 Act, it also covers the factors which

the Secretary of State may consider when deciding whether or not to: a) approve a programme; b) approve a programme with modifications or subject to conditions, or; c) make a proposed modification to a programme or the conditions subject to which it is approved. The Guidance sets out principles that the Secretary of State will expect to see satisfied in the FDP prepared by a nuclear site operator and gives information on ways the operator might satisfy those principles, thereby helping the operator to understand its obligations under the 2008 Act.

Chapter 2: Offshore Renewables Installations

171. Guidance notes for industry, "Decommissioning of offshore renewable energy installations under the Energy Act 2004", were updated in January 2011 to include the effects of the provisions introduced by the 2008 Act.

Chapter 3: Oil and Gas Installations

172. No secondary Legislation.

Chapter 4: Wells

173. No Secondary Legislation

Part 4: Provisions Relating to Oil and Gas

Petroleum Licensing

174. No Secondary Legislation

Third Party Access

175. No Secondary Legislation

Part 5: Miscellaneous

Duties of the Gas and Electricity Markets Authority

176. No secondary Legislation

177. **Transmission Systems**

178. No secondary Legislation

Energy Reports

179. No secondary legislation

Smart Meters

180. As part of the tranches of regulation changes described under implementation the powers under the Energy Act 2008 were used to make amendments to the Electricity Act 1989 and Gas Act 1986 (the 'Acts') which enabled two new statutory instruments that supported the establishment of the Data and Communications Company (DCC). These are listed below:

- The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (SI 2012/2400) - this Order was made in exercise of the powers conferred by Sections 56FA and 60 of the Electricity Act 1989 and Sections 41HA and 47 of the Gas Act 1986 following amendments made to those Acts through section 91 of and Schedule 4 to the Energy Act 2008. The Order was made on 18 September 2012 and came into effect on 19 September 2012 and introduced a new licensable activity into each of the Electricity Act 1989 and the Gas Act 1986. It is unlawful to undertake that activity without holding a licence. The new activity relates to the provision of a service of communicating with smart energy meters on behalf of all licensed energy suppliers;

- The Electricity and Gas (Competitive Tenders for Smart Meter Communication Licences) Regulations 2012 (SI 2012/2414) (DCC Licence Application Regulations) - these Regulations were made in exercise of the powers conferred by sections 56FC and 60 of the Electricity Act 1989 and sections 41HC and 47 of the Gas Act 1986 following amendments made to those Acts through section 91 of and Schedule 4 to the Energy Act 2008. The Regulations were made on 19 September 2012, laid in parliament on the 21 September and came into effect on 12 October 2012 and set out the competitive application process to award licences for the provision of a

service of communicating with smart energy meters on behalf of all licensed energy suppliers. The process under the Regulations allows for a single person to be granted licences for this activity in respect of both electricity and gas smart meters after competition and to become a monopoly provider of communication services in Great Britain.

Gas Meters and Electricity Meters

181. The Energy Act 2008 (Commencement No. 1 and Savings) Order 2009 was made in exercise of the powers conferred by section 110 (2) and (3) of the Energy Act 2008. The Order was made on 15 January 2009 brings in provisions set out in section 92 and 93 (gas meters) and sections 95 and 96 (electricity meters) which came into effect on 1 April 2009.

Connection Offer Expenses

182. No Secondary Legislation

Electrical Safety

183. No Secondary Legislation

Renewable Heat Incentive

184. Since the introduction of the Energy Act in 2008 there have been a number of public consultations to develop the policy behind the scheme, resulting in regulations amending section 100, regulations implementing the non-domestic and domestic schemes, and a series of amendment regulations introduced to improve delivery and increase uptake of the non-domestic RHI.

185. The following regulations have been made under section 100:

- The *Renewable Heat Incentive (Amendment to the Energy Act 2008) Regulations (S.I. 2011/2195)* came into force on 6th September 2011, making minor amendments to the Energy Act relating to energy generated from biomass and biogas;

- The *Renewable Heat Incentive Scheme Regulations 2011 (S.I. 2011/2860)*, set out how the non-domestic scheme would work, came into force on 28th November 2011;

- The *Renewable Heat Incentive Regulations (Northern Ireland) 2012 (S.I. 2012/396)* came into force on 1st November 2012;

- The *Renewable Heat Incentive (Amendment) Regulations 2012* came into force on 31st July 2012 *(S.I. 2012/1999)* , primarily to introduce an interim budget management system that would control spend in the scheme as well as introducing other minor amendments;

- The *Renewable Heat Incentive (Amendment) Regulations 2013 (S.I. 2013/1033)* came into force on 30th April 2013, introducing a long term budget management mechanism 'degression', to replace the previous interim cost control system;

- The *Renewable Heat Incentive (Amendment) (No. 2) Regulations 2013 (S.I. 2013/2410)* came into force on 24th September 2013 to introduce new requirements relating to emissions from plant generating heat from solid biomass, new metering provisions and other minor amendments;

- The *Renewable Heat Incentive (Amendment) (No. 3) Regulations 2013 (S.I. 2013/3179)* came into force on 13th December 2013, to correct minor errors in the previous regulations;

- The *Domestic Renewable Heat Incentive Scheme Regulations 2014* (*S.I. 2014/928)* came into force on 9th April 2014, establishing a scheme available to domestic applicants;

186. The *Renewable Heat Incentive (Amendment) Regulations 2014* were laid in Parliament on 9th April and they came into force on 28 May 2014. These amendments increase tariffs for certain technologies, make provision for the inclusion of air-to-water heat pumps, extend the types of waste which can be used, make provision for preliminary registration of biomethane producers and initial capacity limits for those producers, clarify the rules on combining

Renewable Heat Incentive with grants from public funds and make various amendments relating to Combined Heat and Power systems

Nuclear Information

187. No Secondary Legislation

Application of General Duties

188. No Secondary Legislation

Part 6: General supplementary provisions

189. No secondary legislation.

LEGAL ISSUES

Part 1: Gas Importation and Storage

Chapter 1: Gas Importation and Storage Zones

There are no legal issues to report.

Chapter 2: Importation and storage of combustible gas

190. The Energy Act requires those who ship gas to hold a license to unload gas at an already licensed installation thus adding an additional burden on the shipper. Subject to approval by Parliament, the Deregulation Bill which is due to receive Royal Assent this year, is being used to make an amendment so the prohibition in section 2(1) of the Energy Act does not apply to a person who, by agreement, uses an unloading installation if the installation is already operated and maintained by another person who has a licence for that purpose.

191. This provision will remove an unnecessary regulatory burden on international shippers of gas wishing to utilise such importation facilities, and therefore help to increase the attractiveness of such import facilities in the years to come, adding to our import facility diversity and therefore security of supply.

Chapter 3: Storage of Carbon Dioxide

192. There are no legal issues to report

Chapter 4: General Provisions Relating to Oil and Gas Importations and Storage

193. There are no legal issues to report

Part 2: Electricity from Renewable Sources

The Renewables Obligation

194. In Tate & Lyle Sugars Ltd v Secretary of State for Energy and Climate Change [2011] EWCA Civ 664, a challenge was brought against the level of

support given under the RO for co-firing of biomass with combined heat and power. DECC carried out an early review of the support for co-firing of biomass with CHP under the RO. Having completed the early review DECC decided not to change the level of support for co-firing of biomass with CHP. It was held that there was nothing unlawful in the Secretary of State applying up-to-date information when carrying out the review and that the Secretary of State was justified in not changing the level of support for co-firing of biomass with CHP.

195. In Infinis plc v Gas & Electricity Markets Authority [2013] EWCA Civ 70, a challenge was brought against the Authority's refusal to accredit a station under the RO on the grounds that a Non Fossil Fuel Obligation arrangement provided for the building of a generating station at the same location, and that station had not been commissioned (article 21 of the Renewables Obligation Order 2009). The challenge was successful, as it was held that the Non Fossil Fuel Obligation arrangement no longer applied. It was also held that the claimant had been denied a pecuniary benefit to which it was statutorily entitled, that as a result there had been a breach of the right to property under article 1 of the first Protocol, and that the claimant should, in so far as this is possible, be placed in the same position as if its Convention rights had not been infringed.

Feed-in tariffs for small-scale generation of electricity

196. **Judicial Review** In October 2011, in response to significantly increasing solar photovoltaic deployment levels in the Feed-In Tariffs Scheme, the department consulted on reductions in tariff levels to reflect the falling costs of solar panels. The consultation was to close on 23rd December 2011. The proposal in the consultation was that the new tariffs would apply from 1st April 2012 to all new solar installations where the application was received after 12th December 2011.

The lawfulness of the proposal was challenged by judicial review. There were subsequent hearings in the Administrative Court and the Court of Appeal. In short, the courts decided that the proposal would – if implemented – be

beyond the scope of the enabling power in section 42 of the Energy Act 2008, because it would have retrospective effect. The proposal was not implemented

197. Following the judicial review, the Parliamentary Ombudsman rejected allegations of maladministration, on the basis that the department acted properly at all times, including by taking legal advice from Counsel before consulting on the proposal.

Court Case

198. There remains the issue of civil litigation in the High Court brought by approximately 20 commercial players in the solar sector. The Department is defending the actions it took.

Offshore Electricity Transmission

199. There are no legal issues to report

Part 3: Decommissioning of Energy Installations

Chapter 1 – Nuclear sites: decommissioning and clean-up

200. There are no legal issues to report

Chapter 2: Offshore Renewable Installations

201. The amendments made the following changes to the original decommissioning scheme: (1) they allowed the Secretary of State to issue a decommissioning notice to an associate (for example, the parent company) of a developer; (2) they protect the funds put aside for decommissioning in the event of insolvency: and (3), they gave the Secretary of State additional powers to ask for information on financial capacity of the developer or associate to meet decommissioning obligations.

Chapter 3: Oil and Gas Installations

202. There are no legal issues to report.

Chapter 4 Wells

203. There are no legal issues to report

Part 4: Provisions Relating to Oil and Gas

Petroleum Licensing

204. There are no legal issues to report

Third Party Access

205. There are no legal issues to report

Part 5: Miscellaneous

Duties of Gas and Electricity Markets Authority

206. There are no legal issues to report

Transmission Systems

207. There are no legal issues to report

Energy Reports

208. There are no legal issues to report

Smart Meters

209. There are no legal issues to report

Gas Meters and Electricity Meters

210. There are no legal issues to report

Connection Offer Expenses

211. There are no legal issues to report

Electrical Safety

212. There are no legal issues to report

Renewable Heat Incentives

213. An application for permission to seek judicial review has been made regarding the eligibility date in the latest amending regulations for the increase to the large biomass tariff. The court has not yet considered the matter.

Nuclear Information

214. There are no legal issues to report

Application of General Duties

215. There are no legal issues to report

Part 6: General supplementary provisions

216. There are no legal issues to report

OTHER REVIEWS

Part 1: Gas Importation and Storage

Chapter 1: Gas Importation and Storage Zones

217. The UK has made a number of Orders declaring our rights under the Exclusive Economic Zone (EEZ) provisions of UNCLOS such as a Renewable Energy Zone and others. A consolidated EEZ order, merging the GISZ order and all other orders has also been progressed.

218. The Exclusive Economic Zone Order 2013 (2013/3161) were subsequently enacted, which is referred to above, and which came into force on 31st March 2014. The Gas Importation and Storage Zone (Designation of Area) Order 2009 was revoked on the same day.

Chapter 2: Importation and storage of combustible gas

219. None

Chapter 3: Storage of carbon dioxide

220. None

Chapter 4: General Provisions relating to gas importation and storage

221. None

Part 2: Electricity from Renewable Sources

The Renewables Obligation

222. In its White Paper *Planning our electricity future*, published in July 2011, the Government announced its intention to close the RO to new generating capacity from 31 March 2017. Support for new large-scale renewable electricity generation will be available through Contracts for Difference, which will be introduced in 2014. From 1 April 2017, the RO will continue running in support of accredited capacity for a further 20 years, until 31 March 2037.

From 1 April 2027, it is intended to convert the RO into a fixed price certificate purchase scheme. Powers to close the RO and powers to convert it into a fixed price certificate scheme were included in chapter 7 of the Energy Act 2013. On 12 March 2014, the Government announced its policy on the operation of the RO during the transition period up to its closure to new capacity in April 2017. The Government intends to implement these measures through an RO closure order, which we intend to lay in Parliament in June, with a view to it coming into force this summer

Feed-in tariffs for small-scale generation of electricity Government Reviews

223. **A Fast Track Review of the Feed-in Tariff** was consulted on in March 2011 in response to concerns that large scale solar would deploy a lot faster than originally expected. The Government response was published in June 2011. The review cut tariffs for solar PV >50kW and created a new tariff band for Anaerobic Digestion under the Feed-in Tariff. The Fast track review also trailed the Comprehensive Review of the FITs scheme which ran from 2011 to 2012. The review was split into 4 phases and considered all aspects of the scheme.

224. **Phase 1 of the Comprehensive Review looked at Tariffs for solar PV**. A consultation was launched in December 2011 and the Government response was published in February 2012. The review set new tariff rates for all solar PV bands. The review also introduced new energy efficiency requirements and set a new multi-installation tariff.

225. **Phase 2A of the Comprehensive Review looked at Solar PV costs and other issues**. The review was consulted on in February 2012 and the Government response was published in May 2012. This phase of the review set new tariffs for solar PV installations, for implementation from 1st August 2012, reduced tariff lifetimes from 20 to 25 years and implemented a quarterly degression mechanism. The degression mechanism is key to cost control under the Feed-In-Tariff (FIT) scheme and for getting value for money for

energy consumers, ensuring that higher deployment does not automatically equate to higher costs. It also adjusted the export tariff for all FITs technologies to reflect the increase in electricity retail prices.

226. **Phase 2b of the Comprehensive Review looked at tariffs for non-PV technologies (wind, hydro, Anaerobic Digestion and micro-Combined Heat and Power) and scheme administration issues**. A consultation was launched in February 2012 and the Government response was published in July 2012. This review developed an annual degression mechanism for non PV technologies and changed tariffs from 1st December 2012. It also reviewed eligibility and accreditation arrangements, creating a new preliminary accreditation process for all Hydro, Anaerobic Digestion and Wind bands and solar PV larger than 50 kW. In addition, as well as creating a preliminary accreditation process for community PV projects below 50kW, it relaxed energy efficiency requirements for this type of installation.

227. **Phase 2c of the Comprehensive Review looked at the license conditions for electricity suppliers.** It was launched in September 2012 and the Government response was published in October 2012. This review refined the data collection, registration, levelisation (process through which costs are distributed between suppliers under the FITs scheme), mutualisation (process for sharing out the costs and FITs generators, should any FIT licensee cease to operate, e.g. through liquidation) and Ofgem's enforcement powers.

228. Since the completion of the Comprehensive Review, with the introduction of modified supplier licence conditions in July 2013, two additional legislative changes have been made to the Feed-in Tariff scheme:-

- **The consultation on changes to the Feed-in Tariff scheme for hydro installations** was launched in March 2014 and a Government response will be published in June. This review aims to address confusion caused by the introduction of the preliminary accreditation alongside a new hydro tariff, by making a minor change to the FITs legislation for a very limited number of past hydro applicants to the scheme in the new 100-500kW band.

- **The consultation on changes to the FIT scheme for solar.** On 13 May 2014, the Government published a consultation on several aspects relating to solar PV and community energy projects under FITs, including a proposal to change the degression banding for solar PV. The policy change aims to add protection to the tariff rates for commercial and industrial building-mounted schemes, ensuring that tariffs for this type of installation are not disproportionately degressed by a large increase in the deployment of ground-mounted installations.

229. Ofgem e-serve is the administrator of the Feed-in Tariff scheme. Pursuant to Article 31 of the Feed-in Tariffs Order 2012, Ofgem produces guidance for Feed-in Tariff generators and licensees, which is published on their website and is regularly updated to reflect changes made to the scheme through the review processes.

230. The Energy Saving Trust also provides information for potential Feed-in Tariff generators through their website and Energy Saving Advisory Service helpline, by providing technical information and answers to FAQs.

231. The Microgeneration Certification Scheme (MCS) – operated by Gemserve – certifies installers and products in order for installations to be eligible for FITs, and provide consumer protection. MCS also registers all sub 50kW solar PV and wind installations on its database.

Feed-in tariffs for small-scale generation of electricity Non-Government Reviews

232. National Audit Office review of the modelling used to set the Feed-in Tariff*:* **http://www.nao.org.uk/wp-content/uploads/2011/11/NAO_briefing_FiTs_Nov11.pdf**

233. London School of Economics (LSE) study on equality under the Feed-In-Tariff: http://www.lse.ac.uk/GranthamInstitute/publications/Policy/docs/british-feed-in-tariff-renewable-energy.pdf

Offshore Electricity Transmission

234. Ofgem are currently consulting on a report by independent consultants that estimates that the offshore transmission regime, established in part through these provisions, has saved consumers between £200 – £400 million to date.

235. The National Audit Office published a report on the offshore transmission regime entitled *Offshore electricity transmission: a new model for delivering infrastructure* on 22 June 2012. This highlighted the benefits flowing from the innovative use of competition to award companies licences to transmit electricity from offshore wind farms, but noted that electricity consumers were left with some significant risks, including bearing the cost of inflation.

236. The Public Accounts Committee published a report on the offshore transmission regime entitled *Offshore electricity transmission: a new model for infrastructure* on 14 January 2013, with four sets of recommendations for Government and Ofgem focusing on evaluation of the regime, licence conditions, competition and learning lessons from PFI.

Part 3: Decommissioning of Energy Installations

Chapter 1 – Nuclear sites: decommissioning and clean-up

237. The Joint Committee on Statutory Instruments considered the 2013 Regulations and a small drafting change was made as a result of their advice which came into force on 22 August 2013.

Chapter 2: Offshore Renewable Installations

238. None

Chapter 3: Oil and Gas Installations

239. None

Chapter 4 Wells

240. None

Part 4: Provisions Relating to Oil and Gas

Petroleum Licensing

241. None

Third Party Access

242. None

Part 5: Miscellaneous

Duties of Gas and Electricity Markets Authority

243. The DECC Ofgem Review 2011 looked at the existing regulatory framework, including the 2008 amendments. The Review concluded that the existing regulatory framework had generally provided good value for consumers and had attracted significant investment to the energy sector.

244. The Review did conclude, however, that the framework has struggled to keep up with developments in the Government's wider policy, particularly in terms of social and economic matters. Government therefore introduced, through Energy Act 2013, the framework for a new Strategy and Policy Statement in which the Government will clearly set out:

- the Government's strategic priorities and other main considerations of its energy policy,
- the policy outcomes to be achieved as a result of the implementation of that policy, and
- the roles and responsibilities of those who are involved in implementation of that policy.

Transmission Systems

245. When implementing the 'Connect and Manage' grid access regime, the Government noted the importance of effective ongoing monitoring of the reforms' impacts, to ensure intended outcomes were being delivered. The Government therefore asked Ofgem, with support from National Grid and others where appropriate, to lead a monitoring process. This has involved Ofgem providing an annual published report to DECC Ministers. Ofgem's latest monitoring report was published on 6th December 2013[9].

Energy Reports

246. None

Smart Meters

247. In July 2011 the National Audit Office (NAO) carried out a review of the Programme. This was subsequently followed by a Public Accounts Committee (PAC) hearing in October 2011. The PAC's report and conclusions following that hearing were published in January 2012 with DECC's response to the PAC's recommendations (Treasury Minute) published in March 2012.

248. The Energy and Climate Change Committee (ECC) conducted an inquiry into the Programme in 2013 and published its report in July 2013. The Government's response to the ECC report was published on the ECC's website in October 2013.

249. In January 2014 the Government published a revised and updated Impact Assessment that estimates the full range of costs and benefits associated with the GB rollout of smart meters.

Gas Meters and Electricity Meters

250. None

[9] https://www.ofgem.gov.uk/publications-and-updates/letter-ian-marlee-minister-state-michael-fallon

Connection Offer Expenses

251. None

Electrical Safety

252. None

Renewable Heat Incentives

253. DECC have undertaken a number of reviews of the scheme, as we have progressed from policy development to implementation and review. These are listed as follows:

- *'Providing certainty, improving performance'*, published on 20th July 2012, seeking views on budget management, biomass sustainability and air quality, metering requirements and other minor elements of the non-domestic scheme;

- *'Expanding the non-domestic scheme'*, published on 20th September 2012 alongside a series of calls for evidence related to specific technologies, which sought views on introducing additional technologies into the scheme;

- *'Early Tariff Review'*, published on 31st May 2013, which asked for views and evidence related to the cost base on which the non-domestic tariffs were calculated.

- 'Biomethane Tariff Review', published on 30th May 2014, which asked for views and evidence related to the cost and performance data of biomethane injection plants.

Nuclear Information

254. None

Application of General Duties

255. None

Part 6: General supplementary provisions

256. None

PRELIMINARY ASSESSMENT

Part 1: Gas Importation and Storage

Chapter 1: Gas Importation and Storage Zones

257. Under this Chapter, the UK claimed the rights relating to the unloading and storage of gas, and to related exploration activities. In connection with this, regulatory regimes were established under Chapters 2 and 3 of Part 1, relating to the importation and storage of combustible gas, and storage of carbon dioxide in pursuance of DECCs Energy and Climate Change mitigation policies.

258. The Crown Estate has awarded three methane gas storage licences and two carbon storage licences.

Chapter 2: Importation and storage of combustible gas

259. As UK gas supplies in the North Sea decline, UK dependency on imported gas has risen. The objective of Chapter 2 was to enable the right infrastructure to be put in place to meet this challenge, and help the UK import and store gas. Offshore, developers are keen to exploit new opportunities to store gas under the seabed, or import Liquefied Natural Gas and offload it into pipes or storage at sea. Pre Energy Act 2008 legislation was burdensome, and not fit for purpose.

260. The new regulatory framework was successful in giving certainty and simplicity to developers and will help provide secure gas supplies for the UK in the future.

261. No benchmark for the number of new licences was determined but three storage licences have been applied for and awarded and the Department is in discussions with one further developer wishing to apply for an unloading licence to enable imports of LNG to the UK.

Chapter 3: Storage of Carbon Dioxide

262. DECC's work to date has focused on enabling Carbon Capture and Storage to take place. DECC seeks to establish a shared vision with industry of how large scale CO2 storage could develop and how storage site appraisal can be progressed. The Carbon Capture and Storage Commercialisation Programme, launched in April 2012, is a key step in providing knowledge and confidence around performance of CO2 storage sites.

263. The Crown Estate has responsibility for the management of CO2 storage rights and issuing leases for developers to undertake geological storage of CO2 in the UK Gas Importation and Storage Zone. This includes offshore UK territorial waters and the area beyond the territorial sea (to 200 nautical miles), or the midpoint between countries.

264. UK legislation requires developers to also obtain a CO2 storage licence and permit from the Secretary of State for Energy and Climate Change (or Scottish Ministers), depending upon where the intended storage location has been defined. The Crown Estate works closely with regulatory agencies – particularly the Energy Development Unit within DECC and the Marine Management Organisation on the licensing and leasing of sites process. The Crown Estate have issued two Agreements for Lease, one to National Grid and one to Shell. DECC have issued the Carbon Storage Licences to both, referencing the leases and their co-ordinates.

Chapter 4: General Provisions relating to gas importation and storage.

265. The Schedule 1 amendments were to support the regulatory regimes established under Chapters 2 and 3 of Part 1, relating to the importation and storage of combustible gas, and storage of carbon dioxide. The Schedule 1 amendments have achieved their intended aims.

Part 2: Electricity from Renewable Sources

The Renewables Obligation

266. The RO is currently the main financial mechanism by which the Government incentivises the deployment of large-scale renewable electricity generation in the UK. Since its introduction in 2002, the RO has succeeded in supporting the deployment of increasing amounts of renewable generation from 3.1GW in 2002 to 15.5GW in 2012 and increasing the level of renewable electricity in the UK from 1.8% in 2002 to 11.3% in 2012. By the end of the 2012/13 financial year, some 3,150 stations were accredited under the scheme, producing around 35 Terrawatt Hours (TWh) of electricity. The RO will play a key role in keeping the UK on track to deliver its legally binding EU target to consume 15% of our energy from renewable sources by 2020. As a result of changes to banded support levels introduced in 2013 by the Renewables Obligation (Amendment) Order 2013 (S.I. 2013/768), the RO is expected to deliver around 79TWh of renewable electricity each year by 2016/17.

Feed-in tariffs for small-scale generation of electricity

267. Ofgem's Annual reports for the first three years of Feed-In-Tariffs can be found on the Ofgem Feed- In-Tariff website. These contain a wealth of data about all aspects of the scheme.

268. By end March 2014, after four full years of the Feed-In-Tariff scheme, over 542,000 installations have been registered, totalling some 2.5GW of installed capacity.

269. By March 2015, the central estimate is for 750,000 total installations, 3.5 GW capacity

- installations registered by March 2012 (total capacity 1.3GW) will cost £400 million per year (2011/12 prices) going forward
- new installations from April 2012 to March 2015 (total capacity 2.2GW) are projected to cost £350 million per year going forward

- **there will be nearly twice as much installed capacity** after March 2012 by March 2015, but **at less cost –** a substantial improvement in value for money

270. By March 2021, central estimate of **1.9 million installations**, **9.3 GW** capacity
    - But could be up to **2.8 million installations**, **15.2GW** capacity under different assumptions about costs and hurdle rates
    - **If there is higher deployment, costs will be controlled**, as tariffs will be reduced faster under the FITs degression mechanism introduced in July 2014.

271. The latest FITs deployment statistics can be found at https://www.gov.uk/government/collections/feed-in-tariff-statistics.

Offshore Electricity Transmission

272. The Government and Ofgem have put in place an innovative regulatory regime to deliver offshore electricity connections in a cost-effective, timely and secure manner, and the provisions of section 44 of the 2008 Energy Act are central to Ofgem's administration of the regime. Ofgem is responsible for running a tender process to appoint offshore transmission owners, which harnesses competitive pressures to deliver value for money for consumers. The offshore transmission regime also provides significant benefits for developers by reducing the cost of offshore transmission assets through competition, and thus a project's overall cost of capital.

273. Nine Offshore Transmission Owners worth around £1.4bn have now been successfully licenced under the offshore transmission regulatory regime, with a further £1.5bn worth of assets in the tender process.

274. The regime has tapped into new sources of investment, including pension funds and competition is used to select the network owners to drive savings.

Part 3: Decommissioning of Energy Installations

Chapter 1 – Nuclear sites: decommissioning and clean-up

275. DECC are continuing to monitor the effectiveness of the 2008 Act as we are still at a relatively early stage in applying it in practice to the development of a Funded Decommissioning Programme (FDP). Early indications have been positive. This has been demonstrated by its use in preparing a FDP for the Hinkley Point C power station in Somerset – a key benchmark for testing the legislation. However it has become clear that a number of changes needed to be made to the 2008 Act and to the 2011 Regulations which were revoked and replaced by the 2013 Regulations. DECC will continue to be flexible in making adjustments to the legislation, and to the guidance, as required.

Chapter 2: Offshore Renewable Installations

276. The provisions in the 2008 Act supplement the existing provisions on decommissioning. As such, they have been incorporated into the procedures that already existed to implement the statutory decommissioning scheme.

Chapter 3 - Oil and Gas Installations

277. The impact of the amendments has enabled the Secretary of State to ensure that;

- All relevant parties are liable for decommissioning of offshore installations and pipelines;
- He has the power to require decommissioning financial security at any point during the life of an offshore oil and gas field and reduce the risk of exposure to the taxpayer;
- The funds put aside for decommissioning remain available to pay for decommissioning in the event of insolvency and the taxpayers' exposure is minimised.

278. Since these amendments came into force the taxpayer has not been exposed to any unnecessary decommissioning expenditure. These amendments have

therefore been deemed as successful and the policy objectives have been met.

Chapter 4 Wells

Information about Decommissioning of Wells

279. The new power is to the advantage of licensees, because previously the Secretary of State would have had no alternative but to refuse consent. The power is not expected to be used frequently. DECC is at present working through the procedures for the first time, having discussed a case with the licensee and informed the licensee that the use of these powers would be the only basis on which a drilling consent could be issued. The licensee is content with this approach. We have therefore consented to the drilling of a well that we would otherwise have had to refuse; we expect drilling to start shortly, and if it does we will serve a notice immediately. The power is therefore performing well.

Part 4: Provisions Relating to Oil and Gas

Petroleum Licensing

Transfers without the consent of the Secretary of State

280. The power was never seen as a power that would have to be used frequently and in fact it has not yet had to be used. Nevertheless, it is worth keeping to protect the taxpayer in case of future instances of unconsented assignments of licences.

Model clauses of petroleum licences (section 77 and Schedule 3) Provision of contact details to Minister

281. Licensees are required to provide the Minister with contact details in relation to the person to whom notices, directions and other documents under the licence are to be sent. Considerable IT support is necessary to manage the contact details. The IT development work is currently in progress and DECC anticipates that it will be complete by the end of 2014.

Power of Partial Revocation

282. Revocations of any sort are rare and it was never anticipated that the power would be used on a regular basis. It has not been formally invoked, but it has been considered as a useful option in the one case of insolvency we have dealt with since the Energy Act 2008 received Royal Assent. Nevertheless, the power may be useful in future in protecting from revocation the licence partners of insolvent licensees or those subject to an objectionable takeover.

Third Party Access

283. No impact given as they were not used.

Part 5: Miscellaneous

Duties of Gas and Electricity Markets Authority

284. Ofgem carries out a range of activities across the electricity and gas markets, largely through the licence conditions governing the behaviour of all companies involved in the supply, generation, transmission and distribution of electricity and the supply, transmission and distribution of gas. Ofgem sets price controls for monopoly owners of gas distribution networks and electricity transmission and distribution networks.

285. Finally, Ofgem has a range of enforcement sanctions available to ensure compliance with licence conditions and penalise any breaches. Ofgem must carry out these functions in the way it considers best calculated to meet its objectives. The 2011 Ofgem Review concluded that, overall, the regulatory framework (including the changes made through the 2008 Energy Act) had provided good value for customers and attracted investment, thereby delivering the objective of a robust regulatory framework that delivers for all consumers.

Transmission Systems

286. Under 'Connect and Manage', new generation can connect ahead of the completion of wider transmission reinforcements. This enables earlier grid connection timescales.

287. The Government believes that the 'Connect and Manage' regime is proving successful in delivering its intended outcomes. As Ofgem noted in its last monitoring report:

- Connection dates for 163 large generation projects (with a total capacity of 37 Giga Watts) have been brought forward by an average of five years under 'Connect and Manage', compared to the previous arrangements;
- For small embedded projects, there are 134 projects (with a total capacity of 655 Mega Watts) where connection dates have been brought forward by an average of nine years;
- To date, 15 large and 76 small generators (with a total capacity of 1,199 Mega Watts) have connected to the system under 'Connect and Manage'.

288. In addition, National Grid has estimated that these large generation projects have so far resulted in almost 930,000 tonnes of carbon dioxide being saved.

289. Connection ahead of wider transmission reinforcements can result in additional constraints on the network. Ofgem's latest monitoring report noted that the 15 large generation projects connected under the regime have given rise to constraint costs of £26.6m between April 2011 and September 2013. This represents around 4% of total constraint costs incurred by National Grid over that period.

Energy Reports

290. DECC publishes a large amount of information in the Annual Energy Statement which sets out the Government's progress and priorities in delivering the UK's energy policies, including those relating to sustainable energy. An Annual Energy Statement has been published in each year since 2010.

Smart Meters

291. The Programme is progressing its design, build and test stage, ahead of Data and Communications Company go-live in late 2015. Most householders will have smart meters installed by their energy company between late 2015 and 2020, although some energy companies are starting to install meters now. By the end of Q1 2014, a total of 394,500 smart meters had been installed in domestic properties by the larger energy suppliers.

Gas Meters and Electricity Meters

292. This element of the Act covers the metrological performance of gas and electricity meters to ensure their accuracy.

293. Prior to 2006, Ofgem was responsible for carry out functions that included ensuring gas and electricity meters met national and/or international standards, stamping gas meters, appointment of independent meter examiners and publication of accuracy test reports. These responsibilities and staff were transferred from the Governing body of Ofgem to the National Weights and Measures Laboratory under a Memorandum of Understanding in 2006. The purpose of Part 5: Gas and Electricity Meters in the Act was to give this arrangement a statutory footing.

294. The National Measurement Office publish annual data on gas and electricity meters disputes. For gas, in the first report published in 2006 shows that 3247 domestic, commercial and light industrial gas meters were submitted for dispute testing. In 2013, the latest report, 3536 gas meters were submitted for testing. There are around 22 million gas meters installed in Great Britain. For electricity, the 2006 report showed that 168 domestic electricity meters were submitted for dispute testing. In 2012, the latest report, 273 electricity meters were submitted for testing. There are in excess of 28 million electricity meters installed in Great Britain.

Connection Offer Expenses

295. Section 98 came into force on 26 January 2009, under the Energy Act 2008 (Commencement no 1 and savings) Order 2009 (SI 2009 No 45), reg 2(d)(v). Regulations have not yet been made under the amended section 16A of the Electricity Act 1989. DECC are working with industry to better understand the case for regulations, whilst there could be benefits in terms of a more cost-reflective approach to charging, potentially helping reduce the number of speculative applications, Government is currently considering any risks or additional barriers charging may impose and whether there are alternative means of delivering the desired outcomes.

Electrical Safety

296. Section 99 of the Energy Act 2008 has not been appointed and Electrical Safety Quality and Continuity Regulations powers have only been transferred to HSE under an Agency Agreement.

Renewable Heat Incentives

297. The objective of section 100 was to introduce a financial incentive mechanism for renewable heat – the Renewable Heat Incentive (RHI). This has been achieved, albeit in two stages – first for the non-domestic market in 2011 and subsequently for the domestic market in 2014.

298. The RHI is the first scheme of its kind in the world to offer long term financial incentives to increase the uptake of renewable heat. Not only is this incentivising individual installations, it is looking to build the supply chain and prepare industry for mass roll-out of renewable heat systems in the 2020s and beyond. As with most innovative schemes, lessons are learnt through the early stages of development and delivery and improvements are made to increase effectiveness and efficiency.

299. As of May 2014 the non-domestic RHI has so far accredited almost 4,300 renewable heat installations, representing 780MW of installed capacity. Over £58m in tariff payments have been made for than 1.2 THh of eligible heat that has been generated. As of the end of May 2014 more than 1,000 installations have been accredited onto the scheme.

300. The non-domestic RHI has seen greater than anticipated uptake of small and medium biomass installations, and recent scheme improvements will help increase uptake of a range of renewable heat technologies.

301. The introduction of the domestic RHI in April 2014 was met with widespread appreciation across industry, and early figures from Ofgem suggest a high level of interest in the scheme across the four types of renewable heat technologies that are supported – air source heat pumps, biomass boilers, ground source heat pumps and solar thermal systems.

Nuclear Information

302. As no orders declaring prohibited places have been made under this power, it is not yet possible to undertake an assessment of its effectiveness.

Application of General Duties

303. The Secretary of State has acted lawfully using the general duties set out in the Electricity Act 1989 and Gas Act 1986 when exercising any of the powers under this Act to amend licences. Thus ensuring consistency with the existing statutory framework for the electricity and gas sectors.

Part 6: General supplementary provisions

304. Sections 103 to 112 inclusive define the territorial scope of provisions in the Act, set out requirements for making orders or regulations under the Act

contains minor and consequential amendments, commencement of provisions and defines terms used in the Act.

[i] The Energy Act 2008 (Commencement No 1 and Savings) Order 2009

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