



Memorandum to the Energy and Climate Change Committee: Post Legislative Scrutiny of the Energy Act 2010

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

March 2015



© Crown copyright 2015

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at parly.unit@decc.gsi.gov.uk

Print ISBN 9781474114899
Web ISBN 9781474114905

ID P002702620 47492 03/15

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

**MEMORANDUM TO THE ENERGY AND CLIMATE CHANGE COMMITTEE:
POST-LEGISLATIVE SCRUTINY OF THE ENERGY ACT 2010**

Summary of the objectives	2
Part 1: Carbon capture and storage and decarbonisation	3
Part 2: Schemes for reducing fuel poverty	3
Part 3: Regulation of gas and electricity markets	3
Part 4: Final provisions	5
Implementation	5
Part 1: Carbon capture and storage and decarbonisation	5
Part 2: Schemes for reducing fuel poverty	7
Part 3: Regulation of gas and electricity markets	8
Part 4: Final provisions	12
Secondary legislation	12
Part 1: Carbon capture and storage and decarbonisation	12
Part 2: Schemes for reducing fuel poverty	12
Part 3: Regulation of gas and electricity markets	14
Part 4: Final provisions	15
Legal issues	15
Other reviews	15
Part 1: Carbon capture and storage and decarbonisation	15
Part 2: Schemes for reducing fuel poverty	15
Part 3: Regulation of gas and electricity markets	17
Part 4: Final provisions	18
Preliminary assessment	18
Part 1: Carbon capture and storage and decarbonisation	18
Part 2: Schemes for reducing fuel poverty	19
Part 3: Regulation of gas and electricity markets	20
Part 4: Final provisions	22

**MEMORANDUM TO THE ENERGY AND CLIMATE CHANGE COMMITTEE:
POST-LEGISLATIVE SCRUTINY OF THE ENERGY ACT 2010**

This memorandum provides a preliminary assessment of the Energy Act 2010 “the Act” 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 to support the Coalition’s aim of improving Parliament’s consideration of legislation.

SUMMARY OF THE OBJECTIVES

Introduction

1. The Energy Act 2010 obtained Royal Assent on 8 April 2010. The Act contains the legislative provisions required to implement elements of *The UK Low Carbon Transition Plan – National strategy for climate and energy (2009)*¹.

2. The Act has three principal objectives:
 - The introduction of a framework for a financial incentive to support commercial-scale demonstration of Carbon Capture and Storage (CCS) and funding for the fitting of additional CCS capacity to those projects at a later stage, should it be required;
 - The introduction of schemes for the reduction of fuel poverty (to introduce mandated social price support);
 - The strengthening of the powers of Government and the regulator to ensure that energy markets are working fairly for consumers and delivering secure and sustainable energy supplies.

¹ <https://www.gov.uk/government/publications/the-uk-low-carbon-transition-plan-national-strategy-for-climate-and-energy>

3. These changes are driven by three long term energy challenges facing the UK: keeping energy supplies safe sustainable and secure; maximising economic opportunities; and protecting the most vulnerable consumers.

Part 1: Carbon capture and storage and decarbonisation

4. This Part of the Act establishes a framework for a financial mechanism to support commercial-scale CCS electricity generation projects. The provisions support Government's commitment to the development and deployment of CCS in Great Britain. This Part of the Act forms a component of a programme of support to enable CCS technology to be cost competitive with other low carbon technologies in the 2020s. The Act also requires Government to regularly report on progress made on the decarbonisation of electricity generation in Britain including the development and use of CCS.

Part 2: Schemes for reducing fuel poverty

5. Part 2 of the Act gives the Secretary of State the power to put in place one or more schemes which require benefits to be provided by licenced domestic energy suppliers with the intention of reducing fuel poverty. The main objective of Part 2 of the Act is to provide mandated support to vulnerable consumers in fuel poverty building on previously voluntary social price support.

Part 3: Regulation of gas and electricity markets

6. Part 3 of the Act contains a number of provisions relating to the energy market framework with the intention of ensuring the framework promotes the delivery of secure and low carbon energy supplies whilst continuing to protect consumers:

- **General duties of the Gas and Electricity Markets Authority and the Secretary of State** – the intention of this section is to clarify Ofgem's principal duty as defined in the Gas Act 1986 and the

Electricity Act 1989. These provisions ensure that the interests of consumers are taken as a whole - including their interest in the reduction of greenhouse gas emissions and ensuring security of supply. This section also requires Ofgem to consider the role of measures, other than competition, in protecting the interests of consumers.

- **Exploitation of electricity trading and transmission arrangements** – this section includes powers for the Secretary of State to introduce a Market Power Licence Condition for electricity generators that will make it easier for Ofgem to address certain issues arising from the exploitation of market power where there are constraints on the amount of electricity that can be transmitted. The objective of this section is to provide a targeted and proportionate provision that will address the exploitation of market power whilst avoiding unnecessary uncertainty in the wholesale electricity market in Great Britain that could undermine investment in generation and, hence, security of energy supply.
- **Time limit for imposition of financial penalties by the Gas and Electricity Markets Authority** – extension of the time limit within which Ofgem can impose financial penalties for breaches of licence conditions from twelve months to five years. The main objective of this section is to allow Ofgem to protect the consumer interest by ensuring there is sufficient time for them to make effective use of their existing powers.
- **Notice of unilateral changes to domestic supply contracts** – introduction of a power for the Secretary of State (rather than Ofgem) to modify supply licences to ensure that domestic consumers receive timely notification of changes to the terms of their energy contracts or the price charged for their gas or electricity. This section allows the Secretary of State to act should Ofgem not be able to take action within an appropriate timeframe. This power will expire three years after

coming into force which is considered sufficiently long to permit the issue to be addressed.

- **Adjustment of energy charges** – these sections give the Secretary of State powers to make a scheme for the adjustment of charges for gas and/or electricity. This power is intended as a response to concerns, raised by Ofgem, that energy suppliers had consistently made higher margins for electricity supply than gas supply in 2005-2007. The difference in margins could not be justified by cost differentials and could disadvantage certain groups of customers (e.g. those not connected to the gas grid). This power enables the Secretary of State to step in to address situations where customers are disadvantaged.

Part 4: Final Provisions

7. This Part contains provisions concerning the application of the general duties of the Secretary of State and Ofgem under the Gas Act 1986 and the Electricity Act 1989, statutory instruments, the modification of licences, interpretation and the extent, commencement and short title of the Act. It also introduces a Schedule containing consequential amendments to the Gas Act 1986, the Electricity Act 1989 and the Utilities Act 2000.

IMPLEMENTATION

Part 1: Carbon capture and storage and decarbonisation

Part 1 of the Act was brought into force on 8 June 2010 (in accordance with section 38(3) of the Act). Section 4 gives the Secretary of State the power to make regulations to place a levy on electricity supplies to be paid by electricity suppliers based on the provision of financial assistance for CCS demonstration projects and for additional CCS use at those projects (herein referred to as the CCS levy). The provisions also provide for assistance schemes to be established specifically for the purpose of distributing funds to

CCS projects as an alternative to distributing funds via contractual means (sections 1(3) and 1(4)).

8. In The Budget 2011, the Chancellor announced that support for CCS projects would be made available under section 1(1) of the Act through general public expenditure and not through the CCS levy, and the funds would be distributed via contractual means and not through assistance schemes. As such, no assistance schemes have been made under section 1(3) or section 1(4) of the Act. At this time the Government also confirmed its support for CCS and commitment to funding four CCS demonstration projects.
9. The Budget 2011 also announced that the UK would establish a Carbon Price Floor that would set a rate to provide certainty and support for low-carbon investment, and to help ensure that the UK meets its legally binding emissions targets. The Government brought forward a package of far reaching reforms to the electricity market, in the Electricity Market Reform White Paper *“Planning our electric future: a White Paper for secure, affordable and low-carbon electricity”*² published on 12 June 2011 and implemented through the Energy Act 2013. The 2013 Act included provision for Contracts for Difference (CfD), which it is intended will provide a long-term guaranteed price for low-carbon electricity, including for electricity generated using CCS, and provide additional support to the CCS Commercialisation Programme. The intention is that CCS Commercialisation projects will be supported through CfDs as well as general public expenditure referred to in paragraph 8 above.
10. Section 5 of Act, requires the Government to produce reports every three years, starting in 2012, on progress towards decarbonisation of electricity generation, with specific provision on progress in reducing emissions from coal-fired power generation and progress on the development and use of CCS technology in Great Britain. Each of the first three reports are to include

² <https://www.gov.uk/government/publications/planning-our-electric-future-a-white-paper-for-secure-affordable-and-low-carbon-energy>

an assessment of whether CCS technology has been successfully demonstrated or, if not, when it will be.

11. The first *Decarbonisation and Carbon Capture and Storage Progress Report* was published in December 2012 and covered the period April 2010 to December 2011.³

Part 2: Schemes for reducing fuel poverty

12. Part 2 of the Act was brought into force on 8 June 2010 (in accordance with section 38(3) of the Act). The Secretary of State exercised powers conferred on him by the Act to make regulations which created the Warm Home Discount scheme set out in secondary legislation (primarily the Warm Home Discount Regulations 2011 (SI 2011/1033)).
13. The Warm Home Discount scheme was preceded by the Voluntary Agreement announced in The Budget 2008. Under the Voluntary Agreement, large energy suppliers committed to delivering at least £150 million in social initiatives by 2011. The agreement obligated large energy suppliers to provide fuel poor customers with discount tariffs over the period 2008 – 2011: at least £100 million was to be spent in 2008-09, £125 million in 2009-10 and £150 million in 2010-11.
14. The Warm Home Discount scheme is a policy which obligates large energy companies (those with more than 250,000 customer accounts) to provide a variety of benefits, including a rebate to a selection of low income and vulnerable households in Great Britain. It was also designed to provide a gradual transition for customers who benefited from the Voluntary Agreement.
15. Part 2 of the Act sets out the framework for the provision of mandatory social price support (direct assistance with energy bills) for vulnerable and fuel poor customers which has been used for the Voluntary Agreement and Warm Home Discount policies.

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/65689/7379-decarb-carbon-capture-storage-progress.pdf

16. Part 2 also provides for the establishment of a reconciliation mechanism. This means energy suppliers incur costs in providing benefits which reflect their market share this helps ensure the policies do not distort the energy market.
17. Energy suppliers provided a transition between the Voluntary Agreement and Warm Home Discount scheme by continuing to provide some social tariffs through the legacy spending element of the Warm Home Discount policy.
18. Those eligible for the Core Group rebate, pensioners in receipt of Pension Credit Guarantee Credit who are customers of the suppliers with obligations under the scheme, received a rebate ranging from £120 in scheme year 1 (2011/12) to £140 in scheme year 4 (2014/15).
19. Customers eligible for the Broader Group (who must be a customer of a participating electricity supplier) are required to apply to their supplier for the same value of rebate as the Core Group customers each year. This is distributed on a first come first served basis until suppliers meet their spending obligations.
20. The support offered to fuel poor and vulnerable customers is also diversified through the Industry Initiatives section of the scheme where suppliers are able to provide services such as energy efficiency advice, debt assistance and benefit entitlement advice to fuel poor and vulnerable customers.

Part 3: Regulation of gas and electricity markets

General duties of the Gas and Electricity Markets Authority and the Secretary of State

21. Sections 16 and 17, Part 3 of the Act were brought into force on 8 June 2010 (in accordance with section 38(3) of the Act). These sections of the Act clarified Ofgem's principal duty, making it clear that the interests of consumers should be taken as a whole, including their interest in the reduction of greenhouse gas emissions and ensuring security of supply.

22. The Act also inserted provisions to require that Ofgem, before exercising its functions with a view to promoting competition, must consider:
- to what extent the interests of consumers are protected by actions focused on the promotion of competition, and
 - if there are any other actions (whether or not they would promote competition) that might better protect the interests of consumers.
23. Ofgem must now exercise its functions in line with the amended principal duty.

Exploitation of electricity trading and transmission arrangements

24. Sections 18-23, Part 3 of the Act were brought into force on 16 July 2012 (in accordance with the Energy Act 2010 (Commencement) Order 2012 made under section 38(2)(a) of the Act). Section 18 enables the Secretary of State to modify the conditions of electricity generation licences in order to limit or eliminate the circumstances in which, or the extent to which, licensed generators may obtain an excessive benefit from electricity generation. These circumstances arise during periods of electricity transmission constraint (i.e. when system limitations mean that electricity cannot be transmitted from the location where it is generated to the location where the demand exists). The excessive benefit occurs either where the generator artificially creates or exacerbates a transmission constraint to derive excessive benefit from modifying their generation through the Balancing Mechanism, or where the generator obtains an excessive financial benefit from National Grid (in its role as the Transmission System Operator) in return for reducing their generation.
25. Sections 19 to 23 make further provision in relation to these powers. These powers act to reduce the risk of possible market manipulation and exploitation by fossil fuel generators of market conditions. The power includes a sunset clause to expire 5 years after commencement, which could be extended to 7 years by order of the Secretary of State.

Time limit for imposition of financial penalties by the Gas and Electricity Markets Authority

26. Section 24 of the Act was brought into force on 8 June 2010 (in accordance with section 38(3) of the Act). This section amends the Gas Act 1986 and the Electricity Act 1989 by extending the time limit, within which a financial penalty can be imposed for a breach of licence condition or other regulatory breach from 12 months to five years from when the breach occurred. The aim is to allow Ofgem to protect the consumer interest by ensuring there is sufficient time for them to make effective use of their existing powers.

Notice of unilateral changes to domestic supply contracts

27. Section 25, Part 3 of the Act was brought into force on 8 June 2010 (in accordance with section 38(3) of the Act). This section introduced a power for Secretary of State (rather than Ofgem) to modify energy supply licences to ensure customers receive timely notification of changes.
28. Prior to the passage of the Act, depending on individual customers' billing cycles, a customer may have received written details of a price increase up to 3 months after the increase had taken place. Best practice as set out in Ofgem's consultation on proposed retail market remedies⁴ made it clear that best practice is for energy suppliers to inform their customers about price rises as soon as possible and preferably in advance. This power was intended to ensure that the Secretary of State could modify supply licences to place this best practice on a statutory footing, should Ofgem not be able to take action within an appropriate timeframe. The power also included a sunset clause to expire three years after coming into force, which was considered sufficiently long to permit the issue to be addressed.
29. On 31 March 2010, and in parallel with consideration of the Act by Parliament, Ofgem published an initial consultation inviting views from stakeholders on amending Standard Licence Condition 23 ("SLC 23") to require energy suppliers to give at least 30 days' notice in advance of the date on which an

⁴ <https://www.ofgem.gov.uk/ofgem-publications/38335/retail-package-decision-document.pdf>

increase in charges would take effect. On 1 October 2010 Ofgem published a consultation⁵ presenting their minded-to position on proposals for modifying SLC 23 and a consultation on the draft impact assessment of the proposals in December 2010⁶.

30. In February 2011 Ofgem introduced the amendments to SLC 23 and they took effect on 28 April 2011. As Ofgem were able to take action within an appropriate timeframe the power conferred on the Secretary of State by this section was not exercised and it was removed from the statute books on 8 June 2013 by operation of the sunset clause (section 25(4)).

Adjustment of energy charges

31. Sections 26 -29 were brought into force on 8 June 2010 (in accordance with Section 38(3) of the Act). With effect from September 2009, Ofgem introduced Standard Licence Condition 25A ("SLC 25A"). The effect of SLC 25A was that energy suppliers with 50,000 or more domestic customers must ensure that in supplying or offering to supply electricity and/or gas, the principal terms on which it does so do not materially discriminate without objective justification between one group of domestic customers and any other such group. This licence condition was time limited and expired on 31 July 2012.
32. In April 2012, and in advance of the expiry of the Licence Condition, Ofgem published a statutory consultation which proposed to reinsert the existing provisions of SLC 25A (without amendment other than the date of the sunset clause) for a further two year period, until July 2014. Ofgem also set out their intention to review the customer threshold associated with this condition within a year of the re-insertion of SLC 25A.
33. In October 2012, Ofgem decided not to reintroduce SLC 25A, as development of the Retail Markets Review would address this concern by improving

⁵<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=10&refer=Markets/RetMkts/Compl/pricechange>

⁶<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=11&refer=Markets/RetMkts/Compl/pricechange>

consumer engagement in the market. This would increase the competitive pressure on suppliers, thereby limiting suppliers' ability to introduce differences in price which cannot be objectively justified.

34. As Ofgem, through the introduction of SLC 25A, and subsequently the implementation of the Retail Markets Review, took action within an appropriate timeframe the power conferred on the Secretary of State by this section was not exercised.

Part 4: Final provisions

35. This Part contains provisions concerning the application of the general duties of the Secretary of State and Ofgem under the Gas Act 1986 and the Electricity Act 1989, statutory instruments, the modification of licences, interpretation and the extent, commencement and short title of the Act. It also introduces a Schedule containing consequential amendments to the Gas Act 1986, the Electricity Act 1989 and the Utilities Act 2000.

SECONDARY LEGISLATION

Part 1: Carbon capture and storage and decarbonisation

36. No secondary legislation.

Part 2: Schemes for reducing fuel poverty

37. A selection of secondary legislation and guidance was brought into force following the passage of the Act.
38. The Warm Home Discount Regulations 2011 (SI 2011/1033) (31 March 2011) – place an obligation on certain electricity suppliers to incur spending on the provision of benefits to customers in or at risk of fuel poverty who meet certain criteria.

39. The Disclosure of State Pension Credit Information (Warm Home Discount) Regulations 2011 (SI2011/1830) (made under powers in the Pensions Act 2008) – authorise the sharing of data between the Secretary of State and obligated energy suppliers (those which hold a licence under section 6(1) (d) of the Electricity Act 1989) to provide a rebate to certain customers who are in receipt of Pension Credit Guarantee Credit or where their partner is in receipt of Pension Credit Guarantee Credit.
40. Warm Home Discount: Guidance for Licenced Electricity Suppliers and Licenced Gas Suppliers – Ofgem (19 May 2011) – this guidance sets out how Ofgem will perform its duties under the scheme, what suppliers need to do to comply and how it will interpret various provisions of the Warm Home Discount scheme.
41. The Warm Home Discount (Reconciliation) Regulations 2011 (SI 2011/1414) (21 July 2011) – the purpose of the reconciliation mechanism is to achieve an equitable distribution among scheme electricity suppliers of the aggregate amount of rebates which they provide under Part 3 of the Warm Home Discount Regulations. Electricity suppliers are required to make or receive payments so the amounts of rebates provided by them, after adjustment, are proportionate to their market share.
42. Amendment to the Warm Home Discount Regulations 2011 (SI 2014/695) (13 March 2014) – under Part 4 of the 2011 Regulations, each supplier is required to incur an amount of spending calculated by Ofgem, and regulation 14 provides for an adjustment to be made to a supplier’s non-core spending obligation if it spent more than its non-core spending obligation in the preceding scheme year. These 2014 regulations amend regulation 14 to increase the maximum percentage by which a supplier’s non-core spending obligation for scheme year 4 (1 April 2014 to 31 March 2015) may be reduced if the supplier spent more than its non-core spending obligation in the preceding scheme year from 1% to 34%.

43. As part of the Spending Round in 2013, the Government announced a further commitment to the scheme with a spending target of £320 million in 2015/16. On 11 March 2015 the amended Warm Home Discount Regulations came into force and scheme year 5 (2015/16) will begin on 1 April.

Part 3: Regulation of gas and electricity markets

General duties of the Gas and Electricity Markets Authority and the Secretary of State

44. No secondary legislation.

Exploitation of electricity trading and transmission arrangements

45. Following public consultation on the design of the proposed modification – known as the Transmission Constraint Licence Condition (TCLC) – the modification came into force on 29 October 2012.
46. Ofgem is responsible for monitoring and enforcement of the TCLC and, in accordance with Section 19 of the Act, Ofgem published guidance⁷ on 29 October 2012 to assist generators in complying with this modification.

Time limit for imposition of financial penalties by the Gas and Electricity Markets Authority

47. No secondary legislation.

Notice of unilateral changes to domestic supply contracts

48. No secondary legislation.

Adjustment of energy charges

49. No secondary legislation.

⁷ <https://www.ofgem.gov.uk/ofgem-publications/40377/tclc-guidance.pdf>

Part 4: Final provisions

50. No secondary legislation.

LEGAL ISSUES

51. There are no legal issues to report.

OTHER REVIEWS

Part 1: Carbon capture and storage and decarbonisation

52. As set out in paragraph 10, Section 5 of the Act contains a requirement for the Government to publish a Decarbonisation and Carbon Capture and Storage Progress report every three years. The first report was published in December 2012.

Part 2: Schemes for reducing fuel poverty

An overview of the reviews which have taken place since 2010 are provided below:

53. Monitoring Suppliers' Social Programmes 2010-2011 – Ofgem (2011)⁸ – this report set out to assess the range of social measures suppliers have undertaken to assist their vulnerable and fuel poor customers during the Voluntary Agreement. It found that suppliers met their spend target for the third year of the commitment and most suppliers offered tariffs at rates considerably below their standard direct debit rate.

54. Warm Home Discount Scheme Annual Reports: Scheme Year 1⁹, Scheme Year 2¹⁰ and Scheme Year 3¹¹ – Ofgem – these are the annual reports on the second year of the Warm Home Discount scheme to monitor suppliers' compliance with the scheme. The report monitored suppliers' compliance with

⁸ <https://www.ofgem.gov.uk/ofgem-publications/57104/suppliers-social-spend-report-2010-2011.pdf>

⁹ <https://www.ofgem.gov.uk/publications-and-updates/warm-home-discount-scheme-annual-report-scheme-year-1>

¹⁰ <https://www.ofgem.gov.uk/publications-and-updates/warm-home-discount-annual-report-scheme-year-2>

¹¹ <https://www.ofgem.gov.uk/publications-and-updates/warm-home-discount-annual-report-scheme-year-3>

their obligations and how much was spent on fuel poor and vulnerable customers throughout the relevant scheme year.

55. Government consultation and response on Warm Home Discount flexibility¹² (2013) – a consultation on amending regulation 14 to increase the maximum percentage by which a supplier’s non-core spending obligation for scheme year 4 (1 April 2014 to 31 March 2015) may be reduced if the supplier spent more than its non-core spending obligation in the preceding scheme year from 1% to 34%.
56. Warm Home Discount: Guidance for Licenced Electricity Suppliers and Licenced Gas Suppliers – Ofgem (2013)¹³ – this updated document provides guidance on how Ofgem will perform its duties under the Warm Home Discount scheme, what licensed electricity suppliers and licensed gas suppliers needed to do to comply, and how Ofgem interprets various provisions of the Warm Home Discount scheme.
57. The Levy Control Framework – National Audit Office¹⁴ (2013) – this report examines whether the Levy Control Framework has proved effective in meeting its objectives so far, and sets out the risks to its future effectiveness as levy-funded schemes change. The Warm Home Discount is included under the Levy Control Framework up to 2015/16.
58. The Warm Home Discount Scheme – Parliamentary Briefing: David Hough, Paul Boulton, Edward White¹⁵ (updated 2014) – this paper was written to explain the Warm Home Discount and Voluntary Agreement to MPs to help support their parliamentary duties and provide an early overview of the progress the policy has made to help fuel poor and vulnerable customers.

¹²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266019/warm_home_discount_gov_response.pdf

¹³<https://www.ofgem.gov.uk/ofgem-publications/58952/warm-home-discount-guidance-licensed-electricity-suppliers-and-licensed-gas-suppliers.pdf>

¹⁴<http://www.nao.org.uk/wp-content/uploads/2013/11/10303-001-Levy-Control-Framework.pdf>

¹⁵<http://www.parliament.uk/business/publications/research/briefing-papers/SN05956/the-warm-home-discount-scheme>

Part 3: Regulation of gas and electricity markets

General duties of the Gas and Electricity Markets Authority and the Secretary of State

59. The Ofgem Review 2011¹⁶ looked at the existing regulatory framework, touching upon the 2010 amendments. The Review concluded, that the framework has struggled to keep up with developments in the Government's wider policy and that there was scope to improve alignment between the government's priorities and the regulator's view. Hence the introduction of the Strategy and Policy Statement under the Energy Act 2013, by which the Government clearly sets out the main strategic priorities, the policy outcomes, and the roles and responsibilities of those involved in implementing the policy, including Ofgem. Ofgem must have regard to the Strategy and Policy Statement in exercising its regulatory functions.

Exploitation of electricity trading and transmission arrangements

60. Ofgem monitors electricity generators' compliance with the TCLC. As part of its latest annual report to DECC Ministers on the 'Connect and Manage' grid access reforms, which was published on 16th December 2014¹⁷, Ofgem noted that:

61. "The TCLC has so far had a positive impact. For example, the average amount paid, per Mega Watt/hour, to onshore wind farms to reduce generation is now significantly lower compared to before the TCLC came into force. We will continue to monitor electricity generators' compliance with the TCLC."

62. Section 23 of the Act places a five year sunset clause on the TCLC, with the possibility of a two year extension following an order of the Secretary of State. The five year period is due to expire on 15 July 2017. Towards the end of this five year period, we will review this policy to assess whether the modification should be extended by two years.

¹⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/48134/2151-ofgem-review-final-report.pdf

¹⁷ <https://www.ofgem.gov.uk/ofgem-publications/92053/fifthconnectandmanagereport141216.pdf>

Time limit for imposition of financial penalties by the Gas and Electricity Markets Authority

63. None.

Notice of unilateral changes to domestic supply contracts

64. None.

Adjustment of energy charges

65. None.

Part 4: Final provisions

66. None

PRELIMINARY ASSESSMENT

Part 1: Carbon capture and storage and decarbonisation

67. DECC's work to date has focused on enabling CCS to take place. DECC seeks to establish a shared vision with industry on how future phases of CCS projects will develop and be supported. In the 2010 Spending Review the Chancellor announced up to £1 billion of Government investment for CCS demonstration.

68. The Government announced at The Budget 2011 that it would not proceed with the proposed CCS levy or assistance schemes provided for in the Energy Act 2010. CCS projects would be supported under section 1(1) of the Act through general public expenditure and not through the CCS levy, and the funds distributed via contractual means and not through assistance schemes

69. The CCS Demonstration Programme, which was launched by the previous Government in November 2007, concluded in October 2011. On 12 March 2010, Government awarded funds for the Kingsnorth project in Kent by an

E.ON consortium, and Longannet in Fife, by a Scottish Power consortium for the production of Front End Engineering and Design (FEED) studies.

70. On 20 October 2010 E.ON announced that it would not proceed to the next stage of the competition as the economic conditions were not right for a new build power station. The Government announced in October 2011 that a satisfactory agreement on funding the Longannet project would not be possible within the £1bn allocated.
71. The CCS Commercialisation Programme, launched in April 2012, is a key step in developing commercial-scale CCS projects in the UK. The Government is currently supporting the production of Front End Engineering and Design (FEED) studies for analysis of the technical and commercial issues of two projects – the White Rose coal CCS project located at Drax Power Station in Yorkshire and the Peterhead gas CCS project in Aberdeenshire. The Government continues to engage with industry on potential support for CCS projects under the Electricity Market Reform programme.

Part 2: Schemes for reducing fuel poverty

72. The Secretary of State used the powers in Part 2 of the Act to establish the Warm Home Discount scheme which superseded the Voluntary Agreement agreed by energy suppliers. There have not been any other schemes established using the provisions in the Act since the Warm Home Discount was put in place.
73. Spending during the Voluntary Agreement was set at £325 million over three years (2008-2011) and suppliers exceeded this by £225 million to £600 million over the three years to 2011.
74. The Warm Home Discount is currently in its fourth year and is expected to achieve its spending target of over £1.1 billion. This winter (2014/15) it will

provide over 2 million fuel poor and vulnerable households with a rebate of £140 off their energy bill. The value of the rebate and period and manner in which it is paid is decided by the Secretary of State and monitored for compliance by Ofgem.

75. Participating energy suppliers are required to report on their progress to Ofgem, both before the scheme year starts, and at the end of the scheme year to demonstrate their compliance with the Act and the accompanying secondary legislation.
76. The reconciliation mechanism has been used since the Warm Home Discount scheme began and has worked well to date.
77. The Warm Home Discount has demonstrated the effectiveness of the data sharing powers provided under Section 142 of the Pensions Act 2008 to ensure the smooth process of providing the rebate to Core Group customers.

Part 3: Regulation of gas and electricity markets

General duties of the Gas and Electricity Markets Authority and the Secretary of State

78. The 2011 Ofgem Review¹⁸ concluded that, overall, the regulatory framework (including the changes made through the 2010 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.

Exploitation of electricity trading and transmission arrangements

79. With support from Ofgem, the Government introduced the TCLC in October 2012. Since the introduction of the TCLC, Ofgem has not identified through their own monitoring or been alerted to, any instances of generators creating or exacerbating transmission constraints through the uneconomic running of fossil fuel plants with the aim of deriving an excessive benefit. There is also

¹⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/48134/2151-ofgem-review-final-report.pdf

evidence that the TCLC has had a positive impact in reducing constraint pricing. For example, Ofgem has reported that the average amount paid per unit of electricity to onshore wind farms to reduce generation is significantly lower compared to the period before the TCLC came into force. It should be noted that the TCLC is not specifically targeted at wind farms, and Ofgem monitors the compliance of all generator types.

80. Ofgem will continue to monitor electricity generators' compliance with the TCLC. The power includes a sunset clause to expire 5 years after commencement (July 2017). Prior to operation of the sunset clause the Secretary of State may by order extend the operation of the licence condition for a further two years.

Time limit for the imposition of financial penalties by the Gas and Electricity Markets Authority

81. This section brought Ofgem's powers into line with that of other regulators and enhances its ability to impose appropriate sanctions for regulatory breaches. The section has been used successfully by Ofgem to protect the interest of consumers. Investigations into breaches by licence holders can take between one and two years and the section improves the ability of Ofgem to fine energy companies which fail to comply with their obligations by imposing a financial penalty that reflects the full extent of any licence breach.
82. An example of how this provision has proved to be effective is the recently concluded investigation carried out by Ofgem into mis-selling by a supplier where as a result of the extended time limit Ofgem was able to issue a penalty reflecting the full period of the breach.

Notice of unilateral changes to domestic supply contracts

83. No impact given as this power has not been used.

Adjustment of energy charges

84. No impact given as this power has not been used.

Part 4: Final provisions

85. This Part contains provisions concerning the application of the general duties of the Secretary of State and Ofgem under the Gas Act 1986 and the Electricity Act 1989, statutory instruments, the modification of licences, interpretation and the extent, commencement and short title of the Act. It also introduces a Schedule containing consequential amendments to the Gas Act 1986, the Electricity Act 1989 and the Utilities Act 2000.

ISBN 978-1-4741-1489-9



9 781474 114899