ENERGY BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Energy Bill [HL] as brought from the House of Lords on 25th April 2023 (Bill 295).

- These Explanatory Notes have been prepared by the Department for Energy Security and Net Zero in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

1 The aim of the Bill is to help increase the resilience and reliability of energy systems across the UK, support the delivery of the UK's climate change commitments and reform the UK's energy system while minimizing costs to consumers and protecting them from unfair pricing.

2 To enable this, the Bill is structured around three key pillars:

- Liberating investment in clean technologies.
- Reforming the UK's energy system so it is fit for the future.
- Maintain the safety, security and resilience of the UK's energy system.

3 In respect of liberating investment in new technologies, Parts 1, 2 and 3 of the Bill include provisions to ensure the development of a low carbon energy system, to reduce emissions from industry, transport and potentially heat. These measures include:

- Establishing an economic regulation and licensing regime for CO_2 transport and storage with the Office of Gas and Electricity Markets (Ofgem) as the economic regulator.
- Enabling the Government to implement and administer hydrogen and carbon capture business models including introducing a new hydrogen levy.
- Enabling the establishment of a market-based low carbon heat scheme.
- Enabling the effective and safe delivery of a hydrogen village trial.
- Excluding fusion energy facilities from nuclear site licensing requirements under the Nuclear Installations Act 1965.
- Enabling the support of recycled carbon fuels and nuclear derived fuels in renewable transport fuel orders under the Energy Act 2004.

4 In respect of system reform and consumer protection, Parts 4 – 10 of the Bill include provisions to ensure market frameworks and governance arrangements are geared towards strengthening energy security and becoming a net zero energy system while minimising costs to consumers. These measures include:

- Establishing an Independent System Operator and Planner (hitherto known as the Future System Operator), an independent and first-of-a-kind body acting as a trusted voice at the heart of the energy sector.
- Reforming the current energy code governance framework including granting Ofgem new functions to provide strategic direction and oversight on codes and creating a new class of more independent code managers to deliver an improved system for consumers and competition.
- Enabling competitive tenders in onshore electricity networks.
- Enabling the Competition and Markets Authority (CMA) to investigate more effectively the impacts of mergers between energy companies.
- Introducing a definition of multi-purpose interconnectors from which a new

licensing and economic regime can be developed.

- Clarifying electricity storage as a distinct subset of generation in the 1989 Electricity Act.
- Removing obligation thresholds under the Energy Company Obligation scheme.
- Driving the rollout of smart meters across Great Britain.
- Regulating the heat network market.
- Introducing heat network zoning in areas where they are the most viable solution for decarbonising heat.
- Setting regulatory requirements for Energy Smart Appliances including enabling mandatory functionality for electric heating appliances and electric vehicle (EV) charge points and establishing a new regulatory framework for actors who control these devices.
- Ensuring the energy performance of premises regime is fit for purpose and reflects the UK's ambitions on climate change, including to support achieving the UK's target for net-zero greenhouse gas emissions by 2050.
- Strengthening the Energy Savings Opportunity Scheme.

5 In respect of the safety, security, and resilience of the UK energy system, Parts 11, 12 and 13 of the Bill include provisions to guarantee a robust and resilient supply of core fuels for the UK, to ensure that the UK is a responsible nuclear state and take essential action in protecting the UK Continental Shelf while transitioning to net zero. These measures include:

- Reducing the risk of fuel supply disruption and improve fuel supply resilience in the core fuels sector.
- Amending the Habitats Regulations Assessment process for all projects making applications from late 2023, helping reduce the time it takes to develop new offshore wind projects, whilst maintaining high environmental standards
- Ensuring that the offshore oil and gas environmental regulatory regime continues to be effective, to maintain current levels of environmental standards and facilitate the offshore oil and gas industry's transition to net zero.
- Amending the Petroleum Act 1998 to change the fee regime and cost recovery mechanism for the regulation and offshore decommissioning activities of oil and gas producers.
- Granting the Oil and Gas Authority, whose business name is the North Sea Transition Authority, additional powers to ensure the UK's oil and gas and carbon storage infrastructure remains in the hands of companies best able to operate or decommission it.
- Make expressly clear that certain nuclear sites located wholly or partly in or under the territorial sea adjacent to the UK require a licence and are regulated by the Office

for Nuclear Regulation.

- Amending the regulatory framework for the final stages of nuclear decommissioning including bringing the UK into alignment with internationally agreed recommendations for ending nuclear third-party liability and allowing former nuclear sites to be delicensed earlier than at present.

- Enhancing the UK's nuclear third party liability regime by enabling the UK's accession to the Convention on Supplementary Compensation for Nuclear Damage through amendments to the Nuclear Installations Act 1965.

- Amending the remit and powers of the Civil Nuclear Constabulary to ensure that the constabulary can support other critical infrastructure sites and assist other police forces.

- Bringing Nuclear Decommissioning Authority pensions into line with wider public sector pensions in moving from a final salary scheme to a career average scheme.

Policy background

Parts 1 and 2: Carbon Dioxide Capture, Transport and Storage and Hydrogen Production

6 Carbon Capture, Usage and Storage (CCUS) is a process involving the capture of carbon dioxide (CO_2), from industrial and commercial activities, as well as power generation, and its transportation for the purposes of permanent containment, for example in very deep subsurface rock formations, or reuse, for example in cement. CCUS can be applied to a range of processes including chemical refining, cement, and residual waste management processes, and is likely to play an essential role in meeting the UK's statutory carbon emissions targets. The Climate Change Committee has described carbon capture and storage as "a necessity, not an option" for reaching net zero emissions[1].

7 The Government has committed to provide support for the deployment of two CCUS 'clusters' by the mid-2020s and a further two by the end of the 2020s. The Government's Net Zero Strategy, published in 2021, sets out the ambition to capture and store 20 to 30Mt of CO_2, which includes 6MtCO_2 of industrial emissions, per year, by 2030[2]. A new carbon capture industry could support up to 50,000 jobs by 2030, split across industry, power and the transport and storage network.

8 The Government consulted in 2019 on commercial models to pull through the investment needed to deploy CCUS at scale. The Government's response[3], published in 2020, set out that the proposed model for CO_2 transport and storage is one of economic regulation. This is due to the fact that CO_2 pipeline transport and storage networks are

[1] https://www.theccc.org.uk/wp-content/uploads/2019/05/Net-Zero-The-UKs-contribution-to-stopping-global-warming.pdf

[2] https://www.gov.uk/government/publications/net-zero-strategy

[3] https://www.gov.uk/government/consultations/carbon-capture-usage-and-storage-ccus-duties-and-functions-of-an-economic-regulator-for-co2-transport-and-storage

likely to be operated as regional monopolies encompassing a range of different network users and emitters operating under different commercial models. In this model, a transport and storage company would receive a licence from an economic regulator which grants it the right to charge users in exchange for delivering and operating the transport and storage network. Here the regulator-approved prices charged would reflect efficient costs and a reasonable rate of return based on the level of risk assumed by a transport and storage company.

9 The Government considers Ofgem to be the most appropriate entity to take on the role of economic regulator for CO_2 transport and storage. Part 1 of the Bill establishes the duties and functions for Ofgem to act as economic regulator of CO_2 transport and storage and a framework for the economic licensing of CO_2 transport and storage activities.

10 The Oil and Gas Authority (OGA) and ministers in the Devolved Administrations (the Department for the Economy in Northern Ireland) remain the relevant licensing authorities for regulating CO_2 storage under the powers set out in the Energy Act 2008 to ensure the secure geological storage of CO_2.

11 To help meet the ambitions set out in paragraph 7, the Government confirmed development of the industrial carbon capture business model to provide carbon capture facilities with financial assistance to support the deep decarbonisation of industrial and commercial activities that often have no viable alternatives, such as chemicals, refining, cement, and residual waste management processes.

12 As a gas that can be used as a fuel without emitting harmful greenhouse gases, hydrogen will be critical in reducing emissions from heavy industry, as well as in power, transport, and potentially heat.

13 Under the British Energy Security Strategy[4], the Government announced ambitions for up to 10GW of low carbon hydrogen production capacity by 2030, subject to affordability and value for money, with at least half of this from electrolytic hydrogen. The Government consulted in 2021 on the commercial model to unlock private investment and address market barriers to deploy low carbon hydrogen production at scale. The Government's response[5], published in 2022, confirmed the design of a contractual producer-focused business model to provide revenue support to a range of low carbon hydrogen production pathways to facilitate hydrogen use in a broad range of sectors.

14 Part 2 of the Bill introduces spending powers to provide financial assistance to support the establishment of CCUS, low carbon hydrogen production and hydrogen transportation and storage. The Bill also provides delegated powers to establish the detailed framework for business models, including the designation and duties of a counterparty to enter into and manage business model contracts with carbon capture entities, CO_2 transport and storage companies, and low carbon hydrogen producers. It also provides powers to appoint an allocation body to administer a future competitive allocation process and powers to raise a levy/levies to fund the hydrogen business model, detailed design of which will be subject to further consultation. It will also allow the OGA to identify and discourage potentially undesirable changes of ownership and

[4] https://www.gov.uk/government/publications/british-energy-security-strategy

[5] https://www.gov.uk/government/consultations/design-of-a-business-model-for-low-carbon-hydrogen

control of carbon storage licensees before they take place.

Part 3: New Technology

Low-Carbon heat schemes

15 As set out in the 2021 Heat and Buildings Strategy,[6] meeting the UK's net zero target requires decarbonising virtually all heat in buildings. This requires a transition from the large majority of buildings being heated by appliances which burn fossil fuels to the use of low-carbon technologies. Since nearly half of UK annual natural gas consumption is used for heating buildings, accelerating this transition will also reduce dependency on global fossil fuel markets.

16 The Bill will give the Department for Energy Security and Net Zero's Secretary of State the powers to establish a scheme to encourage the sale and installation of low-carbon heating appliances, such as electric heat pumps.

17 The low-carbon heat scheme envisaged by these powers will play an important role in growing the supply chain for such technologies, through setting targets for certain companies. This will help, for instance, to strengthen the incentives to invest in bringing these technologies to market and promoting and expanding their uptake by consumers.

Hydrogen trials

18 Low carbon hydrogen could be one of a few key options for decarbonising heat in buildings, alongside more established technologies such as heat pumps and heat networks. The Government is working with industry, regulators and others to deliver a range of research, development and testing projects to assess the feasibility, costs and benefits of using 100% hydrogen for heating. This work includes a programme of community trials. As set out in the Government's Heat and Buildings Strategy the Government will support industry to deliver a neighbourhood trial by 2024; (preparation is underway, with the trial due to start in 2024); a village scale trial by 2025; and a potential hydrogen heated town before the end of the decade.

19 The trials, together with the results of a wider research, development and testing programme, will enable strategic decisions in 2026 on the role of hydrogen for heat decarbonisation and whether to proceed with a hydrogen heated town, as set out in the Hydrogen Strategy[7], and the Net Zero Strategy[8].

20 The hydrogen village trial will be led by a gas distribution network operator and will be a grid conversion trial. This means it will involve disconnecting a section of the local gas grid from the natural gas supply and connecting it instead to a hydrogen supply. The Bill will enable this by including provisions that allow trial operators to deliver the trial safely and effectively, and allow for additional consumer protections to be put in place.

Fusion Energy

21 Fusion energy facilities are not identified in the Nuclear Installations Act 1965 as sites that require a nuclear site licence. This clause amends the Nuclear Installations Act 1965 to make the exclusion of fusion energy facilities explicit, to make clear that they will not require nuclear site licences and regulation by the Office for Nuclear Regulation. This

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[6] https://www.gov.uk/government/publications/heat-and-buildings-strategy

[7] https://www.gov.uk/government/publications/uk-hydrogen-strategy

[8] https://www.gov.uk/government/publications/net-zero-strategy

will enable a regulatory framework for fusion that is appropriate and proportionate to the overall hazard of a fusion energy facility.

Renewable Transport Fuels

22 The Energy Act 2004 currently provides powers for the Secretary of State for Transport to create Renewable Transport Fuel Orders. Such orders are support schemes that encourage the supply of renewable transport fuels. New technologies are being developed which can produce low carbon fuels, including those critical to Sustainable Aviation Fuel production, from non-renewable energy sources whilst providing comparable greenhouse gas emissions savings to renewable fuels. This clause extends the range of fuels that can be supported under renewable transport fuel orders to include specific non-renewable fuels, namely recycled carbon fuels and nuclear derived fuels.

Part 4: Independent System Operator and Planner

23 The Government committed, in the Energy White Paper 2020[9] and Future Systems Operator consultation response 2022[10], to update the governance of the energy system to reflect the ambition required to build a net zero energy system. There are many plausible paths to a fully decarbonised system and each of them require significant investment in infrastructure and innovation. This creates an ever-greater requirement for expert and coordinated strategic advice and recommendations.

24 This Bill makes provision for the establishment of an Independent System Operator and Planner (ISOP) within the electricity and gas supply sectors. The ISOP is to be a public sector body, with operational independence from the Government, with responsibilities for planning the development of the electricity and gas transmission systems and operation of the electricity transmission system. This body will also take on a range of additional net zero focused roles, helping drive a more open, flexible and efficient system, and is expected to result in a net saving on energy bills.

25 Many of the functions that the ISOP will undertake are currently carried out by licensed operators owned by National Grid plc and provision is made for the transfer of the whole or parts of these operators out of their current ownership as part of the establishment of the ISOP, with the overall aim of increasing independence and removing potential conflicts of interest.

26 The Bill also makes provision for conferring on the ISOP duties, powers and functions, and enabling its regulation (by licence) by the Gas and Electricity Markets Authority (GEMA).

Part 5: Governance of Gas and Electricity Industry Codes

27 The Bill makes provision for the establishment of a new governance framework for the energy codes. It does this by granting GEMA, Ofgem's decision-making board, a collection of new code-related functions, such as the ability to direct strategic change across the codes, and by creating code management as a new licensable activity. It also includes transitional powers that will make it possible for the GEMA to facilitate the necessary changes to implement the new code governance framework.

28 The energy codes are the detailed technical, operational and commercial rules of the

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[9] https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future

[10] https://www.gov.uk/government/consultations/proposals-for-a-future-system-operator-role

electricity and gas systems, which cover areas like generation, transmission, distribution, supply and retail. They are documents that in most cases act as multi-lateral contracts between industry signatories, each of which is governed by some form of industry-led panel or board with the support of an appointed 'code administrator'.

29 In the Energy White Paper 2020,[11] the Government stated that the energy codes needed to be overhauled to allow Great Britain to transition to a clean energy system and to enable strategic alignment with its net zero ambitions. The Government and the GEMA published two joint consultations on energy code reform: the first[12] in 2019 and the second[13] in 2021. Both of these consultations built on the recommendations of a 2016 report by the CMA, which found that the existing system of energy code governance was adversely impacting competition due to conflicting interests, a lack of incentives to deliver policy changes and the GEMA's insufficient ability to influence code change processes.

Part 6: Market Reform and Consumer Protection

Competitive tendering for electricity projects

30 In order for the UK to reach net zero by 2050 and achieve independence from imported fossil fuels the Government will fully decarbonise the electricity system by 2035, subject to security of supply. Alongside this, the Government also expects a doubling of electricity demand by 2050, as sectors like transport and heat switch to electricity as a fuel source. To accommodate this, there needs to be a significant increase in the amount of electricity network infrastructure in Great Britain.

31 Under the current system, privately-owned electricity network companies build, own and operate electricity network infrastructure across Great Britain. These companies are regional monopolies, regulated by Ofgem, the independent energy regulator, to undertake their network owner role in an efficient way in the interest of consumers. Ofgem does this through benchmarking the network companies against one another to set their allowed revenues. There is an inherent information asymmetry in this process due to the closed nature of the market, and as such regulation may not fully realise benefits to consumers when setting allowed costs. In addition, as only a few network companies have access to and control over the electricity network, innovation can be limited by not allowing third parties to contribute to new ideas and develop them on the network.

32 There is an existing competition regime in place for offshore transmission assets which has saved consumers over £800 million to date. The measures in the Bill will amend the Electricity Act 1989 to extend this competitive process to enable competition to identify onshore network solutions, including smart and flexible options as well as traditional wire-based solutions.

33 Creating new competitive markets in this way will provide new opportunities to invest in networks and should improve efficiency in investment, foster innovative solutions to network needs, including increasing the opportunities for smart and flexible solutions, as well as reducing costs to consumers. This is also expected to encourage greater levels of inward investment to help provide sufficient additional electricity network capacity

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[11] https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future

[12] https://www.gov.uk/government/consultations/reforming-the-energy-industry-codes

[13] https://www.gov.uk/government/consultations/energy-code-reform-governance-framework

to meet growing demand in Great Britain.

Energy Network Special Mergers Regime

34 Energy network enterprises are regional monopolies meaning that each serves different areas of Great Britain exclusively. As such, there is no direct competition between them. The energy regulator, Ofgem[14], licenses energy network enterprises operating in Great Britain and sets their price controls through 'comparative benchmarking', which involves comparing data from all energy network enterprises. The price control is the main method that Ofgem uses to regulate the amount that energy network enterprises can charge suppliers, who in turn pass the costs on to consumers. When network ownership is consolidated into fewer enterprises through mergers and acquisitions there is a potential detriment to Ofgem's ability to carry out effective comparative benchmarking when setting the price control, as there is a reduction in independent entities that can be compared. For example, if the number of independent network enterprises is reduced, then this may reduce the diversity of approaches and data sets available, impacting the way that Ofgem sets efficiencies and requires service quality improvements.

35 Clause 161 and Schedule 14 amend the Enterprise Act 2002 to enable the CMA to investigate energy network enterprise mergers in Great Britain effectively. The legislation will mean that, where the energy network enterprise acquired has a GB turnover of over £70 million, and it is merging with another energy network enterprise that holds the same type of licence, then the CMA must refer the merger to a CMA inquiry group, comprised of CMA panel members, for investigation if conditions are met. The main condition is that the merger has substantially prejudiced, or may substantially prejudice, Ofgem's ability to carry out its functions to make comparisons when setting price controls. The CMA may decide not to refer if there is a consumer benefit arising from the merger that outweighs this prejudice or, for mergers that have not yet completed, the merger is not sufficiently far advanced or sufficiently likely to proceed to justify the reference.

36 Ultimately, if the CMA group concludes that there has been or may be a prejudicial outcome, the CMA will be required to take action to remedy, mitigate or prevent the prejudice and any adverse impacts which have resulted or may result from the merger. In this instance, the CMA will be empowered to place restrictions on the merger, up to and including preventing it from taking place, if this action is reasonable and practicable. The CMA already has these remedial options under the existing merger regime (which assesses if a merger has or may result in a substantial lessening of competition) but the CMA cannot access/use these remedial options effectively for energy networks due to their unique nature as regional monopolies that do not compete for market share. There are opportunities for the merging enterprises to offer undertakings in lieu of a referral to investigation by a CMA group; for example, the enterprises could offer to guarantee no price impacts to consumers for an agreed period, or ring fence parts of the business to protect operational independence.

Multi-purpose Interconnectors

37 Multi-purpose interconnectors (MPIs) combine electricity interconnection between Great

[14] Ofgem is a non-ministerial government department governed by GEMA and to which many of GEMA's statutory functions are delegated (in respect of which it acts on behalf of GEMA). These explanatory notes occasionally refer to Ofgem, as it will carry out the duties bestowed on GEMA through the Energy Networks Special Merger regime established by the Bill.

Britain and other jurisdictions with direct connections to offshore generation, such as wind energy. The Bill will create a new licensable activity for MPIs. Operating an MPI without a licence will be prohibited and Ofgem will be empowered to grant licences.

38 In the Energy White Paper 2020[15], Government committed to "work with Ofgem, developers and the UK's European partners to realise at least 18 gigawatts of interconnector capacity by 2030", over double the current capacity of 7.4 gigawatts. Recent studies have indicated that an increase in interconnector capacity upwards of 18 gigawatts is needed to support a flexible decarbonising grid ready for net zero. The Government has also set targets to achieve 50 gigawatts of offshore wind generation by 2030, and net zero by 2050.

39 Increasing the level of interconnection to 18 gigawatts has been shown to facilitate trade with other markets, reduce consumer bills, enhance the flexibility of the energy system and support increased levels of intermittent renewable energy such as offshore wind. The UK Government supports interconnection as a core part of its energy strategy, due to its benefits in helping to provide an electricity supply that progresses towards the Government's net zero decarbonisation goal in a low cost and secure way.

40 In comparison to separate interconnectors and point-to-point offshore wind connections, MPIs offer increased benefits in terms of reduced capital expenditure, wind curtailment, and fewer coastal landing points.

Electricity Storage

41 Electricity storage is a key technology in the transition to a smarter and more flexible energy system and will play an important role in helping to reduce emissions to net zero by 2050[16]. Technologies such as electricity storage, demand side response and interconnectors can provide flexibility to the system, by shifting when electricity is generated and shifting demand from peak times. Flexibility in the energy system is essential to the integration of high volumes of low carbon power, heat, and transport. Analysis carried out by the Government estimated that flexibility could reduce system costs between £30 to 70 billion from 2020 to 2050[17].

42 In July 2017 the Government and Ofgem published the first Smart Systems and Flexibility Plan[18], this was followed by a Progress Update to the Plan[19] in 2018, and a second Smart Systems and Flexibility Plan[20] in July 2021. These documents set out actions for the Government, Ofgem and industry to support the transition to a smarter

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15 https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future

16 https://www.gov.uk/government/publications/transitioning-to-a-net-zero-energy-system-smart-systems-and-flexibility-plan-2021

17 https://www.gov.uk/government/publications/transitioning-to-a-net-zero-energy-system-smart-systems-and-flexibility-plan-2021

18 https://www.gov.uk/government/publications/upgrading-our-energy-system-smart-systems-and-flexibility-plan

19 https://www.gov.uk/government/publications/upgrading-our-energy-system-smart-systems-and-flexibility-plan

20 https://www.gov.uk/government/publications/transitioning-to-a-net-zero-energy-system-smart-systems-and-flexibility-plan-2021

and more flexible system, including removing barriers to electricity storage. One of the commitments from the 2017 Smart System and Flexibility Plan, re-iterated in the 2021 Plan was to define electricity storage in primary legislation.

43 The regulatory framework for electricity was not built with technologies such as electricity storage in mind. This has led to a lack of legal clarity over its treatment, creating a barrier to its deployment. To some degree clarity has been achieved in relation to securing planning consent for electricity storage but further clarity is needed for electricity storage to be developed, providing certainty to developers and investors.

44 The intention of formalising storage as a distinct subset of generation within the Electricity Act 1989 is to remove the current ambiguities and provide clarity and certainty over its treatment within the existing frameworks and possible future frameworks. The proposed definition is supported by responses to the Government and Ofgem's Call for Evidence on a smart, flexible energy system[21]. This approach avoids unnecessary duplication of regulations while still allowing specific regulations to be determined for storage assets, in the shortest possible timeframe.

Energy Company Obligation

45 The Energy Company Obligation (ECO) places an obligation on energy suppliers to install energy efficiency and heating measures in England, Scotland and Wales and is focused on providing support primarily to low income and vulnerable households. Suppliers meet their obligation by using their own in-house installation arms or by contracting with a third party to find eligible households and install measures and are likely to seek to pass these costs onto customer bills.

46 Since ECO came into effect, there has been a large increase in the number of suppliers in the market and therefore those obligated under ECO. Currently a potential market distortion exists where some suppliers are obligated, and others are not. This means non-obligated suppliers do not incur these costs as compared to larger, obligated suppliers.

47 In the Energy White Paper 2020[22], the Government committed to reducing the participation threshold for ECO, subject to not introducing disproportionate costs for smaller suppliers. If this was to be done currently (with no buy-out available) it could cause financial hardship for those smaller suppliers who are not able to benefit from economies of scale.

48 This Bill will expand the powers for the ECO scheme to give energy suppliers the option to meet their ECO obligations simply by making a payment to an approved third party for an approved purpose, therefore reflecting the Government's commitment to establish a fair and competitive market by allowing smaller suppliers to fulfil their ECO obligation in a more cost-effective way.

49 Once a buy-out mechanism is established, the intention is that all suppliers will be obligated under ECO, with only a few exemptions for the very smallest suppliers where the cost of administration would be disproportionate, due to their customer numbers and supply volumes being too low. This will address the current issue of potential market distortion without placing undue financial strain on smaller suppliers.

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[21] https://www.gov.uk/government/consultations/call-for-evidence-a-smart-flexible-energy-system

[22] https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future

Smart meters

50 The Energy Act 2008, the Electricity Act 1989 and the Gas Act 1986 provide the Secretary of State a number of powers in relation to smart metering including to: make activities relating to smart metering licensable; modify gas and electricity licence conditions and industry codes; and veto any proposal by Ofgem to consent to the transfer of the smart meter communication licences.

51 The Government has used the first of these powers to make the provision of the GB-wide smart meter communication service licensable, and the second to develop the regulatory framework. The regulatory framework continues to develop to facilitate the rollout of smart meters in Great Britain. The third power has not yet been used but is provided in order to maintain regulatory stability and government oversight of smart metering.

52 These powers are currently due to expire on 1 November 2023. This Bill provides for these powers to continue to be available to the Department for Energy Security and Net Zero Secretary of State for a further five years until 1 November 2028. This will enable the Secretary of State to intervene where required to drive the rollout of smart meters in line with the annual targets imposed on gas and electricity suppliers through licence conditions for the 4 years to 2025. The extended timeframe will also enable the Secretary of State to ensure that the benefits enabled by the rollout can be fully realised, including through a post-implementation review of the rollout after 2025.

Part 7: Heat Networks

53 Heat networks are a crucial part of how the UK will reach its net-zero targets as they are one of the most cost-effective ways of decarbonising heating. There are over 14,000 heat networks in the UK, providing heating and hot water to approximately 480,000 consumers. The Climate Change Committee, in its advice on the fifth carbon budget[23], estimated that around 18% of UK heat could come from heat networks by 2050 to support cost-effective delivery of the UK's carbon targets (up from around 2% currently). The measures within this bill will drive forward the growth and decarbonisation of the market whilst ensuring consumers receive the same level of protections afforded to other energy consumers.

54 Currently, there are no sector specific protections for heat networks consumers. In its 2018 heat networks market study[24], the CMA found that, although on average heat networks deliver a comparable service to individual heating systems, there was a sufficient minority of consumers who receive significantly worse outcomes and government should therefore regulate the sector. These measures will deliver on this recommendation and the commitment in the 2020 Energy White Paper to regulate the sector and will extend Ofgem's role to cover heat networks. As the regulator Ofgem will help to ensure consumers get a fair price and reliable supply of heat.

55 In the Heat and Buildings Strategy[25] and Net Zero Strategy[26] the Government committed to invest £338m in the Heat Network Transformation Programme, and to enable heat network zoning to create a step-change in low-carbon heat network market

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[23] https://www.theccc.org.uk/publication/the-fifth-carbon-budget-the-next-step-towards-a-low-carbon-economy/

[24] https://www.gov.uk/cma-cases/heat-networks-market-study

[25] https://www.gov.uk/government/publications/heat-and-buildings-strategy

[26] https://www.gov.uk/government/publications/net-zero-strategy

growth. The measures in this bill contain key zoning provisions and will facilitate central and local government working together, with industry and local stakeholders, to identify and designate areas within which heat networks are expected to be the lowest cost solution for decarbonising heat. This will help to accelerate deployment of heat networks by enabling long term planning and coordination between stakeholders and increasing investor certainty. The proposals are expected to deliver an additional 7% of total UK heat demand and save 13.1 million tonnes of CO2 emissions over carbon budgets 4 to 6 (2023 to 2037).

Part 8: Energy Smart Appliances and Load Control

56 Transitioning to a smart and flexible energy system is essential to improving energy security, reducing consumer bills, enabling new and innovative industries to flourish, and meeting the UK's net zero targets. A smart system could reduce costs by up to £10 billion a year by 2050, by reducing the amount of new generation and network infrastructure needed to meet increased electricity demand.

57 In a smart and flexible system, consumers can shift their electricity usage to times when it is beneficial for the energy system and be rewarded for doing so by saving money on their energy bills. This is often termed "Demand Side Response" (DSR), and the activity of sending signals to Energy Smart Appliances (ESAs) to control their consumption is referred to as "load control." ESAs are connected devices such as smart electric heating appliances, batteries, and smart Electric Vehicle (EV) charge points, which can adjust their energy consumption to help deliver DSR.

58 In line with the commitments set out in the Smart Systems and Flexibility Plan (2021)[27] and the Energy White Paper 2020[28], the Bill will make provisions to allow the Government to establish a new regulatory framework for smart energy. This includes provisions to set regulatory requirements for ESAs, to mandate that electric heating appliances must have smart functionality and to require certain activities related to load control to only be carried out by persons holding licences for those activities. In addition, the Government will take new powers to mandate smart functionality for smart EV charge points, in addition to those in the Automated and Electric Vehicles Act 2018, to ensure cohesive regulation across all ESAs.

59 As the uptake of ESAs and related services increases, new risks such as cyber security and grid instability need to be mitigated. Furthermore, without intervention consumers may become locked-in to a particular service provider when they buy an appliance, or locked-out from certain services or tariffs. These new measures will enable the Government to ensure the electrification of heat and transport in particular can be delivered securely and at the lowest cost, saving consumers money on their energy bills while protecting the energy system.

Part 9: Energy Performance of Premises

The Energy Performance of Premises

60 The Bill includes new clauses which will give the Secretary of State the power to make changes to the existing Energy Performance of Buildings (EPB) regime to ensure that it is fit for purpose and reflects the UK's ambitions on climate change, including to support

[27] https://www.gov.uk/government/publications/transitioning-to-a-net-zero-energy-system-smart-systems-and-flexibility-plan-2021

[28] https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future

achieving the UK's target for net-zero greenhouse gas emissions by 2050. The future Energy Performance of Premises framework will need to play an increasingly important role if the UK is to achieve this goal. Energy certificates provide consumers, building owners and occupiers, and third parties with information on the energy performance of the premises stock and support effective decision-making on improving the energy efficiency of premises. "Premises" is defined as a building or a part of a building, such as a private home or apartment and includes any equipment, systems or facilities used by a building or part of a building, such as air-conditioning units, which are subject to separate energy certification under the existing EPB regime.

61 The current EPB regime derives from EU Law and is reflected in the Energy Performance of Buildings (England and Wales) Regulations 2012 (the EPB Regulations 2012). Previously, Section 2(2) of the European Communities Act 1972 permitted the Secretary of State to make provisions for the purpose of implementing any EU obligation, including the power to legislate by means of orders, rules, regulations or other subordinate instruments. The EPB regime was implemented in the UK using this power (certain specific aspects relating to the keeping of the public register of energy performance certificates were introduced under section 74 of the Energy Act 2011). Pursuant to the European Union (Withdrawal) Act 2018, section 2(2) was repealed. The current EPB regime is classed as Retained EU Law as it was derived from EU Law. It therefore falls under the scope of the Retained EU Law (Revocation and Reform) Bill. The new powers in the Energy Bill will provide replacement powers, enabling the Government to amend, revoke or replace the existing EPB regime to ensure it continues to meet UK-specific objectives. The powers include the power to make regulations requiring the assessment, certification and publication of information relating to the energy efficiency and energy usage of premises.

Part 10: Energy Savings Opportunity Schemes

62 The Bill includes new clauses which will give the Secretary of State the power to make changes to the existing Energy Savings Opportunity Scheme (ESOS). ESOS currently requires large undertakings (businesses) as defined under the Companies Act 2006, and small or medium undertakings that are in the same corporate group as a large undertaking, to carry out an energy audit at least once every four years. This audit must cover the energy used in their buildings, transport and industrial processes. Following the audit, recommendations must be made on cost-effective energy saving measures which will enable the undertaking to improve its energy efficiency. Audits must be either carried out or reviewed by approved assessors who meet the competence requirements in Publicly Available Specification 51215.

63 ESOS is important to the UK's plans to meet net zero targets and reduce energy costs for businesses. The scheme helps businesses by providing information on cost-effective actions they can take to improve their energy efficiency; information having been identified as a key barrier to business energy efficiency. The existing scheme's net benefit is estimated at £1.6 billion; with the costs of audits expected to be significantly outweighed by the savings from the proposed recommendations.

64 The requirements for the current ESOS scheme are set out in the Energy Savings Opportunity Scheme Regulations 2014. As part of EU Exit, the European Communities Act 1972, which provided the primary powers to amend the 2014 ESOS regulations, was repealed. This means no changes to the regulations can currently be made. The new powers in the Bill will provide replacement powers, enabling the Government to amend or replace the existing ESOS regulations, subject to any consultation requirements, to ensure the ESOS scheme continues to meet UK-specific objectives.

65 An independent evaluation and post-implementation review of the scheme in 2020 and a Business, Energy and Industrial Strategy (BEIS) select committee report in 2019 both identified opportunities to improve the scheme, and the scheme also needs updating to reflect changes such as the UK's 2050 net zero target.

66 The government consulted[29] in 2021 on making changes to strengthen ESOS and in the 2022 government response[30] committed to implementing four core options to:

- Strengthen requirements for audits and make them more standardised;
- Improve the quality of ESOS audits;
- Add a mandatory net zero element to the audits in future phases; and,
- Require public disclosure of high-level recommendations by participants

67 The government also committed to consulting again before introducing any secondary legislation to cover two longer-term options to:

- Extend the scheme to Medium-Sized Enterprises and,
- Mandate action to improve energy efficiency.

68 The powers set out in these clauses would allow regulations to be made to cover both changes the government has announced following the consultation via amendment of the existing scheme, as well as enable the current scheme to be maintained. The estimated total energy bill savings to businesses from the announced changes over the period 2023 to 2037 is £1.12 billion.

Part 11: Core Fuel Sector Resilience

69 This part of the Bill relates to measures which will help ensure that the resilience of the UK core fuel supply system is maintained, and which will apply to core fuels and core fuel activity. Core fuels in this measure are crude oil-based fuels and renewable transport fuels. Core fuel activity is the storage, handling, carriage, transport, conveyance, processing, or production of such fuels in the UK and contributes to the supply of core fuels to consumers or persons carrying on business in the UK. Currently, crude oil-based fuels provide >90% of the energy for transport and so this subsector will initially provide the majority of persons likely to be within the scope of this Part. Crude oil-based fuels are also used by more than 1.5 million homes for heating. As the UK economy transitions towards net zero greenhouse gas emissions, the balance of this will change, with renewable transport fuels likely to grow in importance.

70 A consultation held in 2017 investigated the resilience of the sector and identified a substantial level of risk to fuel supplies caused by changes to the industry over many years. Detail of the economic case is set out in the impact assessment that accompanies this Bill.

71 The supply of fuels is largely unregulated and has no central system coordinator. There is only limited regulation which addresses the risks to the supply of fuel before a state of emergency is declared. Examples of such limited sector regulation include: the National Security and Investment Act 2021 which now covers acquisitions of major core fuel

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29 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/999452/strengthening-energy-savings-opportunity-scheme-consultation.pdf

30 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1094702/energy-savings-opportunity-scheme-consultation-govt-response.pdf

sector companies; the Offshore Safety Act 1992 which allows the Department for Energy Security and Net Zero Secretary of State to direct the operator of an oil refinery for the purpose of preserving its security; and the Network and Information Systems Regulations 2018, to boost the overall level of security (both cyber and physical resilience) of network information systems of certain companies which provide essential services including in the oil sector.

72 Following consultation, full regulation of the sector (i.e., creating a licensing regime) was considered inappropriate as the sector has no existing monopoly and currently functions well as a highly competitive market, with some of the lowest pre-tax fuel prices in Europe. However, while the Government works closely with industry on a voluntary basis to try to address issues relating to core fuel sector resilience and risks to security of core fuel supplies as they arise, market participants have repeatedly told the Government that competition concerns remain a barrier to full co-operation on a voluntary basis, thus requiring legislative intervention.

73 The purpose of the measures is to improve the resilience of the sector, reduce the risk of disruption to economic activities from the loss of fuel supplies, and reduce the risk of emergencies affecting fuel supplies. The intention is to give the Government powers to take pre-emptive action to encourage the sector to build resilience rather than respond to an emergency. The principal measures provide for powers to require information and to direct certain entities to take action to maintain or improve, or reduce risks to, resilience or continuity of supply of core fuels. The information powers will allow the Government to identify fuel supply risks. The powers of direction will allow the Government to support the industry in ensuring resilience ahead of any potential crisis and within the structure of the core fuel supply market, thereby reducing the need for the use of emergency powers. This is accompanied by a funding power if required.

Part 12: Offshore Wind Electricity Generation, Oil and Gas

Offshore Wind Electricity Generation

74 The Bill provides primary powers to implement the Offshore Wind Environmental Improvement Package. This package will address the impacts of offshore wind infrastructure in the marine environment and speed up the consenting process. These powers will enable improved assessment of the environmental effects of offshore wind developments' marine infrastructure on protected sites. Where compensatory measures are required for damage to the national site network or a protected marine area, these clauses will allow compensation to be delivered by developers working together if that is more appropriate through "strategic compensation." The powers will enable future delivery of a Marine Recovery Fund(s), which will be an optional mechanism that developers can choose to use to deliver their compensatory measures.

Offshore Oil and Gas (Habitats and Arrangements for Responding to Marine Oil Pollution)

75 The Bill provides suitable primary powers which would ensure that the offshore oil and gas environmental regulatory regime remains fit for purpose by allowing the future introduction of changes through secondary legislation. The delegated powers would ensure that the Department for Energy Security and Net Zero Secretary of State is able to adequately: (i) respond to changes in policy delivery required to meet the challenges of achieving net zero, including extending regulatory regimes for habitats assessment and emergency oil pollution planning and response to new offshore activities, such as hydrogen production and storage; (ii) implement changes, resulting from any future court judgments; and (iii) implement lessons learned from any future offshore incident.

Oil and gas cost recovery

76 It is a fundamental principle of the decommissioning regime that a person who is responsible for developing or operating an offshore installation or pipeline should also be responsible for decommissioning at the end of its useful life. Department for Energy Security and Net Zero currently has powers to charge those responsible for offshore installations and pipelines fees at two points in time, in connection with its regulatory functions in approving and revising offshore (oil and gas and carbon storage) decommissioning programmes. Due to the increasing scale of offshore decommissioning activities and the associated complexity and duration of the regulatory functions associated with them, the current cost recovery mechanism is no longer fit for purpose. This measure will make amendments to future proof the cost recovery mechanism in line with the polluter pays principle of environmental law.

Change in control of licensee

77 The Oil and Gas Authority (OGA) cannot currently prevent undesirable changes of ownership and control of petroleum licensees before they happen. It can only examine and seek to remedy them after the event.

78 The Bill will allow the OGA to identify and discourage potentially undesirable changes of ownership and control before they happen. This will help ensure that the UK's oil and gas infrastructure remains in the hands of companies with the best ability to operate it.

Part 13: Civil Nuclear Sector

Licensing a Geological Disposal Facility Beneath the Seabed

79 A Geological Disposal Facility (GDF) is a highly engineered facility capable of isolating radioactive waste within multiple protective barriers, deep underground, so that no harmful quantities of radioactivity ever reach the surface.

80 In its 2018 policy paper, Implementing geological disposal – working with communities: An updated framework for the long-term management of higher activity radioactive waste[31], the Government reiterated its commitment to geological disposal as the best means to manage the most hazardous radioactive waste for the long term. In the same policy document, the Government also reiterated that a GDF would be a nuclear installation under the Nuclear Installations Act 1965 and would therefore require a licence from the Office for Nuclear Regulation (ONR).

81 The process to find a location for a GDF is underway and there is interest from communities in locating a GDF off the coast deep below the seabed. The measure in the Bill will make clear that certain nuclear sites, located wholly or partly in or under the sea (within the boundaries of the territorial sea adjacent to the UK) are required to be licensed and made subject to regulatory oversight by the ONR in Great Britain and by the Secretary of State in Northern Ireland. As the ONR's powers in relation to nuclear sites are principally set out in the Nuclear Installations Act 1965 and the Energy Act 2013 (EA 2013), amendments to both of these Acts are required. While the policy driver for this change is to ensure a GDF beneath the seabed is licensable, the legislative changes cover other nuclear sites located wholly or partly in or under the territorial sea adjacent to the UK.

82 In due course, using an existing delegated power in the Nuclear Installations Act 1965, a

[31] https://www.gov.uk/government/publications/implementing-geological-disposal-working-with-communities-long-term-management-of-higher-activity-radioactive-waste

statutory instrument will be brought forward to make a GDF (whether located beneath the seabed or otherwise) a prescribed installation that requires a licence, and as such, subject to ONR regulation.

Decommissioning of Nuclear Sites

83 These measures follow the Government's 2018 consultation[32] on adopting the Organisation for Economic Co-operation and Development (OECD) Nuclear Energy Agency's "Decommissioning Exclusion"[33] recommendation (2014), to allow qualifying nuclear sites to exit the requirement for nuclear third-party liability and on amending the processes for ending or varying nuclear licences.

84 Firstly, under the current regulatory arrangements, nuclear third-party liability continues for longer in the UK than required by international agreements. This measure will align the UK with those agreements.

85 Secondly, in the final stages of decommissioning and clean-up of nuclear sites, hazards and risks fall to levels comparable to those on non-nuclear industrial sites. This measure will allow ONR to end the nuclear licence once satisfied that nuclear safety matters have been resolved and to pass responsibility for regulation of work activities during the remaining demolition work to the Health and Safety Executive (HSE).

86 Former nuclear sites will also remain under regulation by the relevant environment agency for years or decades after the end of the nuclear licence. The environmental legislation is more suitable for land remediation than the existing nuclear regulation. In particular, the environmental legislation allows for lightly radioactively contaminated concrete substructures and pipes to remain buried on site, where it is safe to do so and subject to environmental permit. It is anticipated that there will be applications for on-site disposal, which will reduce the negative impacts of excavation of the material (generation of radioactive dust, risk to workers) and the impacts of transporting waste to disposal facilities elsewhere.

Excluded Disposal Sites

87 The UK is a signatory to the Paris and Brussels Conventions on Nuclear Third Party Liability. These Conventions were amended by Protocols in 2004. One of the amendments was to extend the requirement for nuclear third party liability to disposal facilities for radioactive waste of nuclear origin. In 2016, the UK passed the Nuclear Installations (Liability for Damage) Order to implement these proposals. This Order came into effect on 1 January 2022.

88 The Bill will implement the OECD Nuclear Energy Agency's 2016 "*Low Level Waste Exclusion*"[34] This will allow qualifying low level waste disposal facilities to exit the

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[32] https://www.gov.uk/government/consultations/the-regulation-of-nuclear-sites-in-the-final-stages-of-decommissioning-and-clean-up

[33] OECD Nuclear Energy Agency "Decision And Recommendation Of The Steering Committee Concerning The Application Of The Paris Convention To Nuclear Installations In The Process Of Being Decommissioned", 2014 https://www.oecd-nea.org/jcms/pl_20232/decision-and-recommendation-of-the-steering-committee-concerning-the-application-of-the-paris-convention-to-nuclear-installations-in-the-process-of-being-decommissioned-2014

[34] OECD Nuclear Energy Agency ""Decision and Recommendation Concerning the Application of the Paris Convention on Third Party Liability in the Field of Nuclear Energy to Nuclear Installations for the Disposal of Certain Types of Low-level Radioactive Waste" 2016 https://www.oecd-nea.org/jcms/pl_19768/decision-and-recommendation-concerning-the-application-of-the-paris-convention-on-third-party-liability-in-the-field-of-

requirement for nuclear third party liability in view of the low levels of risk they present. This will reduce costs for operators of these disposal facilities and ensure disposal capacity as the nuclear decommissioning programme accelerates.

Convention on Supplementary Compensation for Nuclear Damage

89 Nuclear Third Party Liability (NTPL) treaties are international agreements that ensure that in the unlikely event of a nuclear incident there is a minimum amount of compensation available to victims and that claims are channeled to the operator of the nuclear installation (and not the supply chain). Operators are required to have sufficient coverage to meet their liability cap to ensure that compensation would be available to victims. These agreements ensure that claims are heard in the country in which the incident occurs, which gives clarity to victims regarding the appropriate jurisdiction for bringing claims. Further, the conventions provide for strict liability, so that claimants need only prove harm and not fault. This brings benefits to potential victims, while encouraging investment by limiting the potential liability of operators who can cover their liability through private insurance and protecting the supply chain from claims. Additionally, some regimes create an international pooling mechanism amongst contracting parties to provide additional funds to victims if the operator liability cap is reached. The UK is currently party to the 1960 Paris Convention and 1963 Brussels Supplementary Convention (together Paris-Brussels) and has ratified the 2004 Protocols that came into force on 1 January 2022. NTPL treaties are implemented domestically through the Nuclear Installations Act 1965. The UK is intending to enhance its NTPL regime by seeking accession to the Convention on Supplementary Compensation for Nuclear Damage (CSC).

90 The legislation will introduce amendments to the Nuclear Installations Act 1965 in order to implement the requirements of the CSC to enable the UK's accession. Accession to the CSC would expand the number of countries that the UK has NTPL treaty relations with, including key nuclear partners: the US, Japan, and Canada. Nuclear power has an important role to play in domestic energy security and in reducing greenhouse gas emissions to net zero in 2050, and an effective NTPL regime is a key enabler for driving new nuclear projects. Accession would be likely to give private sector developers increased confidence in investing in new nuclear projects; offer participants in the UK's nuclear supply chain protection from claims; and reduce the risk of increased costs and timings associated with essential projects such as decommissioning. Additionally, these benefits are also equally applicable to potential UK exports, both presently and into the future.

91 As with the 1963 Brussels Supplementary Convention, the CSC establishes a pool of funds which countries can draw from to provide compensation for victims. The size of the fund is dependent on the United Nations contributions and installed nuclear capacity of the contracting parties at the time of an incident. The exact size of the fund will change over time as reactors come offline and online, exchange rates fluctuate, and United Nations contribution rates of contracting parties change. At present, with the UK as a contracting party the fund would be around £116 million, with the UK's contribution £7.5 million. This would only be called upon in the event of an incident occurring in a CSC member country after exceeding the operator liability limit. To date no party has drawn on any international funds.

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nuclear-energy-to-nuclear-installations-for-the-disposal-of-certain-types-of-low-level-radioactive-waste?details=true

Civil Nuclear Constabulary

92 The Civil Nuclear Constabulary (CNC) is the specialist armed police force that protects civil nuclear sites in England, Wales and Scotland, and civil nuclear material in transit in Great Britain and internationally. The CNC's remit is defined in Chapter 3 of the Energy Act 2004 (c.3). That Act establishes the Civil Nuclear Police Authority (CNPA) to govern the CNC, the Constabulary's function, jurisdiction and powers, and mandates inspection by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services.

93 The Bill amends the functions and powers of the CNC and CNPA to enable the CNC to utilise their expertise in deterrence and armed response to support the security of other critical infrastructure sites or provide other policing services in the interests of national security. It also streamlines the CNC's arrangements to provide assistance to other police forces and enables the CNC to apprehend individuals across jurisdictions in Great Britain. In addition, it amends the timetable for the publication of the CNPA's three-year strategy plan.

Relevant Nuclear Pension Schemes

94 Government policy, led by HM Treasury, is to reform public sector pension schemes by implementing the recommendations from Lord Hutton's review conducted in 2011. This resulted in the Public Service Pensions Act 2013, which reformed the majority of pension schemes within the public service. Government policy is for final salary pension schemes in the public sector to be reformed to a Career Average Revalued Earnings (CARE) based scheme, in line with the Public Service Pensions Act 2013 and over four million public sector workers have already moved to new pension arrangements.

95 There are two final salary public sector schemes (with a total of approximately 8000 scheme members) within the Nuclear Decommissioning Authority's (NDA) group that are therefore within scope for reform, with estimated savings currently expected to total in the region of £200 million subject to the date of implementation.

96 Recognising the vital work that the NDA and its workforce delivers, the Department for Energy Security and Net Zero and the NDA worked with national trade unions in 2017 to develop an agreed pension benefit structure that was tailored to the characteristics of the affected NDA employees. This resulted in a proposed bespoke CARE benefit structure which is in line with the key principles of reforms already implemented in respect of other public sector pension schemes. The bespoke CARE scheme design was formally accepted by the national trade unions following statutory consultation with affected NDA employees and a ballot of union members.

97 A public consultation was undertaken and published in December 2018, inviting views from stakeholders about how government proposes to enable the Nuclear Decommissioning Authority to implement pension reform of the two pension schemes in scope: the Combined Nuclear Pension Plan (CNPP) and the SLC section of the Magnox Electric Group of the Electricity Supply Pension Scheme.

98 Following the public consultation, the policy outlined in paragraph above was adopted. The measures featured in the Bill will enable NDA to amend pension schemes for their employees in the nuclear sector in alignment with wider changes to public sector pensions.

Legal background

99 The UK's energy system is governed by a wide range of different pieces of legislation, a number of these are amended by this Energy Bill. This legislation, and a brief description of the main changes relevant to each, is provided below to assist the reader in placing some of the details described in these Explanatory Notes in context.

100 The Nuclear Installations Act 1965 is amended for a number of purposes relating to: nuclear decommissioning, low level nuclear waste regulation, the scope of the 1965 Act in relation to fusion energy facilities, the territorial extent of the Act for the purposes of geological storage in the territorial sea and for the purposes of acceding to the Convention on Supplementary Nuclear Damage.

101 The Enterprise Act 2002 is amended primarily for the purpose of allowing the Competition and Markets Authority to take action in relation to mergers between two or more energy network enterprises. That Act and the Competition Act 1998 are also modified for those and other purposes.

102 The Energy Act 2004 is amended for the purpose of making changes to the powers and remit of the Civil Nuclear Constabulary and to provide a power to include as renewable transport fuel, additional fuel types derived from nuclear power and from waste.

103 The Energy Act 2008 is amended to provide for the continuing supervision of the roll-out of Smart Meters and the Smart Meters Act 2018 is amended as a consequence of these amendments. This Act is also amended so that the modifications it makes to the Petroleum Act 1998 accurately reflect the current policy related to the abandonment of carbon dioxide storage installations.

104 The Gas Act 1986 is modified to ensure that the powers contained in that Act work for the purpose of conducting the hydrogen grid conversion trial. This Act is also amended in particular, to include new licensing functions for the Independent System Operator (ISOP) in respect of their planning and forecasting function and a licensing function for the new code manager who will have responsibility for the governance of a designated gas license document.

105 The Rights of Entry (Gas and Electricity Boards) Act 1954 is modified so that the relevant provisions apply as though a reference to a gas operator includes a person conducting a hydrogen grid conversion trial.

106 The Electricity Act 1989 is amended for a number of reasons but in particular to provide new activities are licensable under the terms of that Act. These include: the activity coordinating and directing the flow of electricity for the purposes of transmitting electricity (relevant to the ISOP), industry code governance, the activity of operating a multi-purpose interconnector and a power to make regulations regarding performing load control functions. A new definition is also added to this Act which relates to storing electricity.

107 The Petroleum Act 1998 is amended to add a section related to the Oil and Gas Authority's power over changes of control over petroleum licenses and to provide for a new charging scheme related to work carried out by the Secretary of State to abandonment programs for offshore installations. This Act is also applied in other parts of the Bill (see Energy Act 2008 above) related to the abandonment of carbon dioxide storage installations.

108 A number of minor consequential amendments are also made other primary legislation including the Utilities Act 2000, the Energy Act 2013, the Energy Act 2016 and the Heat

Networks (Scotland) Act 2021.

109 The Climate Change Act 2008 is amended to broaden the scope of removals of greenhouse gases so that it includes a number of different removal methods and not just to removals through land use.

Territorial extent and application

110 Clause 277 sets out the territorial extent of the Bill, that is the jurisdictions to which various provisions of the Bill are subject. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect. Most of the provisions in the Bill extend and apply to England, Scotland and Wales with some provisions also extending to Northern Ireland. Some provisions in the Bill extend and apply to England and Wales or apply to England only. The commentary on individual provisions (or groups of provisions) of the Bill includes a paragraph explaining their extent and application.

111 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. Aspects of the Bill fall within devolved competence. In line with the Sewel Convention, the UK Government will seek the legislative consent of the Devolved Legislatures for the provisions that engage the Legislative Consent Motion process.

112 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Part 1: Licensing of Carbon Dioxide Transport and Storage

Chapter 1: Licensing of Activities

Clause 1: Principal objectives and general duties of the Secretary of State and the economic regulator

113 This clause establishes the Gas and Electricity Markets Authority as the economic regulator of carbon dioxide (CO_2) transport and storage, and establishes that the principal objectives and general duties for the Secretary of State and economic regulator in its decision making and exercise of their respective functions under this Part of the Bill are to:

a. protect the interests of current and future users of CO_2 transport and storage networks;

b. protect the interests of consumers where relevant;

c. promote the efficient and economic development and operation of transport and storage networks, having regard to the need for licence holders to be able to finance their licensable activities.

114 Users of the network are defined as those seeking to have their carbon dioxide conveyed to storage.

115 The principal objectives reflect the balance of considerations for an emergent CO_2 transport and storage sector, where the needs of both current and future users of the networks, and by extension consumers who may fund carbon capture activities for certain users, need to be balanced with the need for efficient and economic networks that are able to attract the investment that will be needed to drive innovation and growth.

116 In carrying out their functions under this Part of the Bill, the Secretary of State and economic regulator must carry out their functions in a manner best calculated to:

a. promote effective competition

b. promote the resilience of transport and storage networks, and

c. protect the public from dangers arising from the construction, operation and decommissioning of transport and storage infrastructure.

117 The economic regulator and Secretary of State shall also have regard to the need to contribute to the achievement of sustainable development, including statutory decarbonisation targets.

Clause 2: Prohibition on unlicensed activities

118 This clause prohibits a person from carrying on certain activities without a licence.

119 The activities comprise the transportation of CO_2 by onshore and offshore pipeline and operating a site for the geological storage of CO_2. The scope of the licensable activities is initially concerned with pipeline transportation of CO2 and the operation of an associated geological storage facility as these assets have monopolistic characteristics.

120 This clause also enables the Secretary of State to specify in regulations other, non-pipeline, means of transportation of CO_2 (e.g. shipping, road, rail) to which the licensing

regime should apply, should it be considered appropriate in future to extend the scope of the regime. This might be required if competitive forces do not regulate prices in those sectors as anticipated.

121 In addition to the licence requirements established in Part 1 of the Bill, the licensing requirements for CO_2 storage activities under the existing provisions of Chapter 3 of Part 1 of the Energy Act 2008 continue to apply.

Clause 3: Consultation on proposals for additional activities to become licensable

122 This provision provides for prior consultation on any proposals to extend by regulations the application of the licensing regime to other (non-pipeline) forms of transportation of CO_2.

Clause 4: Territorial scope of prohibition

123 The prohibition on operating a CO_2 transport and storage network extends across the UK onshore and offshore, including the territorial sea and waters in a Gas Importation and Storage Zone.

Clause 5: Exemption from prohibition

124 This clause enables regulations to be made providing for exemptions to be granted from the prohibition on carrying out licensable activities without a licence. Exemptions may only be granted by the Secretary of State and may be granted either to a class of persons or to an individual person, following a process of consultation.

Clause 6: Revocation or withdrawal of exemption

125 The Secretary of State may attach conditions to any exemption, and may revoke or withdraw an exemption if, for example, such a condition is breached, or if an exemption is no longer considered appropriate.

Clause 7: Power to grant licences

126 This clause provides for the granting of licences to permit the carrying out of carbon dioxide transport and storage activities. In the enduring regulatory regime, licences will be granted by the economic regulator. In the initial period, as set out in clause 16 and Schedule 1 the power to grant licences will rest with the Secretary of State.

Clause 8: Power to create licence types

127 In the future the market may evolve such that it may become appropriate for separate licences to be granted to cover distinct elements of a transport and storage network, to allow operators to specialise in the provision and operation of certain elements of the transport and storage infrastructure, for example to cover the onshore and offshore elements separately, and which may necessitate different licence conditions. This clause enables the Secretary of State, by regulations, to provide for the creation of different types of licence for the licensable activities specified in clause 2(2).

Clause 9: Procedure for licence applications

128 This provision provides that the process for licence applications may be specified in regulations. Such regulations may specify the detail of how the application should be made and any associated fees payable.

Clause 10: Competitive tenders for licences

129 This clause enables regulations to be made to establish a procedure for granting future licences on a competitive basis.

Clause 11: Conditions of licences: general

130 This clause establishes the conditions that may be included in a licence. Such conditions must be limited to those which the grantor (the Secretary of State or the economic regulator) considers necessary having regard to their objectives.

131 In order that the economic regulator may cover its costs of administering the licence, this clause confirms that the licence may contain conditions requiring a payment to be made to the economic regulator during the term of the licence.

132 Conditions may also include the ability to require that the licence holder: complies with directions relating to specified matters; consents to the disclosure of information; be prohibited from doing certain actions unless the consent of the Secretary of State or economic regulator has been provided; refer certain matters for a determination by the economic regulator or the Secretary of State; and refer certain things e.g. contracts or agreements which are related to the licence, for approval from the economic regulator or the Secretary of State.

133 In particular subsection (3) confirms that the licence may contain provision about the calculation of the 'allowed revenue' that the licence holder is entitled to receive.

134 Subsections (5) and (6) enable the licence to require the provision of certain information to inform persons who are considering applying for a licence and also potential users of the network who are considering whether to apply for financial support for carbon capture activities, where carbon capture could be from a range of potential sources, including power plants, industrial facilities, low carbon hydrogen, carbon capture from energy from waste, carbon capture from bioenergy and potentially direct air capture.

135 Any monies received by the economic regulator pursuant to the conditions must be paid into the Consolidated Fund.

Clause 12: Standard conditions of licences

136 A number of conditions will be appropriate to include as standard in all licences of the relevant type (subject to certain exceptions). For example, it is likely to be appropriate to require all CO_2 transport and storage companies to avoid any undue preference or undue discrimination in the terms on which they undertake the conveyance of CO_2, in order to ensure there is an open market which drives down costs by reducing anticompetitive behaviour.

137 The standard conditions of the licence are automatically incorporated by reference when the licence is granted. If different types of licence are developed pursuant to clause 8 there may be different standard conditions for each of those types.

Clause 13: Modification of conditions of licences

138 This clause provides for the economic regulator to be able to modify the conditions of a licence. If the economic regulator intends to make a modification, this clause sets out how that modification should be made. The Secretary of State has the power, within the consultation period, to direct that a modification should not be made and the economic regulator must comply with any such direction.

139 The economic regulator is obliged to publish the decision and modifications in such a manner as it considers appropriate to bring it to the attention of those likely to be affected by the modification, stating the effect of the modifications, how it has taken account of any representations and the reasons for any proposed differences between the original and modified proposal.

Clause 14: Modifications of conditions under section 13: supplementary

140 This clause requires that where the economic regulator has made modifications to the standard condition of a licence of a particular type, it must also make similar changes to the standard conditions of any other licence of that type.

Clause 15: Modification by order under other enactments

141 This clause provides for the Secretary of State and the CMA to modify licence conditions in circumstances where it is necessary to account for mergers between enterprises which are licence holders and ensure effective competition in the market.

Clause 16: Interim power of Secretary of State to grant licences

142 The Secretary of State will grant initial licences and determine the initial terms and conditions of the first licences. These licences will be regulated by the economic regulator. For the enduring regulatory regime, the power to grant licences will be transferred to the economic regulator. Together with Schedule 1, this clause provides for the Secretary of State to set in regulations the date on which responsibility for the granting of licences transfers from the Secretary of State to the economic regulator.

Clause 17: Termination of licence

143 The terms of the licence will provide for the economic regulator to be able to revoke a licence, in certain predefined circumstances and after providing a certain number of days' notice. The economic regulator will be required to notify persons who may be affected by the licence termination, which includes the relevant licensing authorities for CO_2 storage licences under the provisions of the Energy Act 2008.

Clause 18: Transfer of licences

144 This clause provides for a licence to be transferred to another person, or the inclusion of another person as a party to the licence, providing the consent of the economic regulator has been granted. That consent may be made subject to specified conditions. For example, a licensee may wish to transfer their licence as part of a proposed commercial merger transaction.

Clause 19: Consenting to transfer

145 This clause describes the process that must be followed by the economic regulator before it gives consent to any transfer, requiring a notice of any proposal to grant consent to be given to specified persons and requiring the economic regulator to take into account any representations made by those persons in advance of making a decision. In particular, the Secretary of State has a right to direct the economic regulator not to consent to a transfer of licence as there may be Government support contracts in place between the Secretary of State and the transport and storage company pursuant to the licence.

Clause 20: Appeal to the CMA

146 This clause establishes that a licence holder, or a transport and storage network user whose interests are materially affected by a decision by the economic regulator to modify a licence condition, has a right to appeal a licence modification decision to the CMA. This is intended to ensure due process and that there are sufficient safeguards for investors whose rights may be interfered with by a proposed licence modification during the term of the licence.

147 The CMA's permission is required to bring an appeal, but the CMA may only refuse to allow an appeal on one of the grounds specified in subsection (4) These are: where the person bringing the appeal's interests are not materially affected by the decision or because the grounds for appeal are trivial or vexatious or have no reasonable prospects of success.

Clause 21: Procedure on appeal to CMA

148 The process for appeals to be made and dealt with is set out in Schedule 2. Schedule 2 sets out the process by which an application to bring an appeal may be made; provides that the CMA may direct any decision not to have effect pending the determination of an appeal; specifies the time limit for representations and observations by the economic regulator to be made; establishes the way that a CMA group who is making this quasi-judicial determination should be constituted; and specifies the matters that may be considered on appeal. Further, to ensure a fair process and in order that the CMA may make a fully informed decision, the provisions establish a right for the CMA to require the production of documents and written statements, and for persons to attend to give oral evidence. It establishes an offence for failure to comply with a notice to provide information and allows the CMA to make a costs order relating to the appeal.

Clause 22: Determination by CMA of appeal

149 This provision sets out the matters to which the CMA must have regard when determining an appeal and the circumstances in which the CMA may allow an appeal to be brought.

Clause 23: CMA's powers on allowing appeal

150 This clause sets out the remedies available to the CMA where it has allowed an appeal. The CMA can quash the decision or require the economic regulator to reconsider the decision. If the appeal relates to a price control decision, the CMA can quash the decision, require the economic regulator to reconsider the decision or substitute its own decision.

Clause 24: Time limits for CMA to determine an appeal

151 This clause sets out that the CMA has an obligation to determine any appeal against a decision within a period of four months of the date on which permission to bring the appeal was given, unless it is a price control decision, in which case they have a period of six months.

152 Where representations on timing are made and the CMA considers there are special reasons why the time limits above cannot be met, it may have an extra month for its decision. Thereby the CMA must determine an appeal in five months, or seven months in the case of a price control decision. In this case the CMA must inform the parties of the time limit and publish it in a manner as it considers appropriate to bring it to the attention of parties who may be affected by the determination.

Clause 25: Determination of appeal by CMA: supplementary

153 This clause sets out that any determination by the CMA must be contained in an order setting out the reasons for the determination and stated to take effect on the time specified in the order. The order must be notified to the parties to the appeal and published as soon as reasonably practicable in such manner as the CMA considers appropriate to bring it to the attention of parties who may be affected by the determination (with the ability to redact commercially sensitive information or to protect personal data).

154 The economic regulator must take necessary steps to comply within the time specified within the order, or, where not specified, within a reasonable timeframe.

Clause 26: Provision of information to or by the economic regulator

155 This clause allows the economic regulator to request and provide information from or to relevant persons or bodies listed in subsection (2) as it considers appropriate to facilitate

the duties or functions of the economic regulator or the relevant person or body.

156 Subsection (2) lists relevant bodies including the North Sea Transition Authority (referred to in the legislation as 'the Oil and Gas Authority'), the Environment Agency, the Health and Safety Executive Scottish Ministers, the Scottish Environment Protection Agency, the Welsh Ministers, Natural Resources Wales, the Department for the Economy in Northern Ireland, the Northern Ireland Environment Agency, the Health and Safety Executive for Northern Ireland, the CMA and any other person the economic regulator considers appropriate who has powers conferred by or pursuant to primary legislation, which is intended to include the counterparty to any contracts providing consumer or taxpayer support for associated carbon capture activities. The economic regulator may also request from or provide information to any other persons or bodies not listed in subsection (2) as it considers appropriate.

157 Information requested by the economic regulator should be provided within the time period specified in the notice.

158 Disclosure of information in accordance with this power does not breach any obligation of confidence owed by the person making the disclosure nor does it breach any other restriction on disclosure however that restriction is imposed. However, this power does not authorise or require disclosure in breach of the data protection legislation.

Clause 27: Power of Secretary of State to require information

159 This clause confers power to the Secretary of State to request information directly from a licence holder as required for the purposes of the Secretary of State's functions. This could include requests for information to inform a transfer scheme or to facilitate the formulation of policy. Such information should be requested by way of a notice, which explains the nature and form of the information required and time within which a response is requested. However such a request cannot be made to obtain information protected by legal professional privilege, or, in Scotland, confidentiality of communications.

160 Disclosure of information in accordance with this power does not breach any obligation of confidence owed by the person making the disclosure nor does it breach any other restriction on disclosure however that restriction is imposed. However, this power does not authorise or require disclosure in a breach of the data protection legislation.

Clause 28: Monitoring, information gathering etc

161 Under this clause the economic regulator is obligated to keep the state of the market under review, in particular reviewing the activities of operating a site for the permanent storage of carbon dioxide and associated transportation of carbon dioxide as well as ancillary activities.

162 The economic regulator may collect information for the carrying out of market monitoring functions, and is obliged to share relevant information with the Secretary of State or the CMA as requested.

Clause 29: Power to require information for purposes of monitoring

163 In order to enable it to properly carry out its functions and fulfill its obligation under clause 28 to keep the state of the market under review, the economic regulator may request relevant information by notice from any licence holder.

164 This provision establishes an offence where the licence holder does not comply with a request for relevant information or alters or destroys a document.

165 Disclosure of information in accordance with this provision does not breach any obligation of confidence owed by the person making the disclosure nor does it breach any other restriction on disclosure however that restriction is imposed. However, this power does not authorise or require disclosure in breach of the data protection legislation.

Clause 30: Duty to carry out impact assessment

166 This clause applies where the economic regulator is minded to pursue a proposal which could have a significant impact on licence holders or persons engaged in activities associated with the licensable activities or on the general public or the environment. Prior to implementing any such proposal, the economic regulator is required to carry out and publish an assessment of the likely impact of implementing the proposal or confirm that it considers it unnecessary to carry out such an assessment, with the reasons for this conclusion.

167 If the economic regulator publishes an impact assessment for a proposal, this clause requires that it publishes the assessment in an appropriate manner to provide an opportunity for those who are likely to be significantly affected by the proposal's implementation to make representations. The economic regulator is required to explain how representations must be made alongside the assessment and allow an appropriate opportunity for representations to be made prior to implementation.

168 A list of the assessments carried out during the relevant financial year and a summary of the decisions taken during that year which relate to proposals which were assessed must be published in every annual report published pursuant to clause 41.

Clause 31: Reasons for decisions

169 To ensure transparency of decision making, under this clause the economic regulator and the Secretary of State are required to give reasons for their decisions and determinations listed in subsection (1).

170 Upon making a decision the economic regulator or the Secretary of State must publish a notice stating the reasons for the decision for the benefit of those who are likely to be interested, as well as, sending a copy of the notice to the relevant licence holder. But before publishing a notice the economic regulator or the Secretary of State must have regard to the need to exclude information that could seriously and prejudicially affect the interests of an individual or body.

Clause 32: Enforcement of obligations of licence holders

171 Together with Schedule 3, this clause provides for the economic regulator to enforce the conditions of licences and other obligations upon licence holders. Schedule 3 sets out procedural requirements which the economic regulator must comply with in relation to enforcing and securing compliance with licence conditions, including in respect of the imposition of financial penalties.

Clause 33: Making of false statements etc

172 This clause sets out that it is a statutory offence to make false statements knowingly or recklessly when providing any information under this Part.

Clause 34: Liability of officers of entities

173 This clause establishes the circumstances in which action may be taken against company officers such as directors within a corporate entity in relation to an offence has been committed under this part of the Bill.

Clause 35: Criminal proceedings

174 This clause sets out that an offence under Part 1, which could be committed onshore or in an offshore place may be taken to have been committed in any place in the United Kingdom and that offences committed in offshore places may only be instituted by the Secretary of State or by the Director of Public Prosecutions.

Chapter 2: Functions with respect to competition

Clause 36: Functions under the Enterprise Act 2002

175 This clause provides for the economic regulator for carbon dioxide transport and storage to exercise certain functions under the Enterprise Act 2002 concurrently with the CMA. This covers those functions under Part 4 of the Enterprise Act 2002, other than certain powers which rest only with the CMA, i.e. s166 (duty on the CMA to compile a register), 171 (duty on CMA to publish information and guidance relating to the exercise of their functions) and 174E (power for CMA to publish a statement on penalties), insofar as those functions:

- are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013); and
- relate to commercial activities connected with the transportation and storage of carbon dioxide i.e. those activities which are ordinarily prohibited without a licence under Part 1 of the bill, and any ancillary activities.

176 This clause sets out how relevant provisions within Part 4 Enterprise Act 2002 should be read to give effect to this. It also requires the economic regulator to provide certain information to a CMA group for the purpose of assisting a market investigation reference.

Clause 37: Functions under the Competition Act 1998

177 This clause provides for the economic regulator of carbon dioxide transport and storage to exercise certain functions under Part 1 of the Competition Act 1998 concurrently with the CMA, to enable them to investigate and enforce matters relating to anti-competitive behaviours and abuse of dominant position insofar as they relate to carrying on of relevant transport and storage activities.

Clause 38: Sections 36 and 37: supplementary

178 This clause provides for the economic regulator and CMA to consult each other prior to exercising those functions under the Enterprise Act 2002 and Competition Act 1998 which are held concurrently in respect of the economic regulation of CO_2 transport and storage activities. It provides that neither entity may exercise functions under those Acts if such functions have already been exercised in relation to that matter by the other. It provides for the Secretary of State to make a determination in the event of a question arising as to whether the economic regulator has concurrent powers in relation to a particular case.

Chapter 3: Reporting Requirements

Clause 39: Forward work programmes

179 This clause establishes the process under which the economic regulator must set a forward work programme for the carrying out of its functions in respect of the regulation of carbon dioxide transport and storage. A forward work programme should include estimates of the expenditure expected to be incurred in connection with the

programme. It is anticipated that Ofgem may choose to set out the transport and storage forward work programme covering their activities as economic regulator within a single document which also covers the forward work programme they are required to publish in relation to their functions in the gas and electricity markets pursuant to section 4 Utilities Act 2000.

Clause 40: Information in relation to CCUS strategy and policy statement

180 This clause requires the economic regulator to publish such information as may be required by any CCUS strategy and policy statement within a document or forward work programme. This clause confirms the circumstances in which that duty does not apply and where the economic regulator may choose not to include certain information within a forward work programme for a particular financial year.

Clause 41: Annual report on transport and storage licensing functions

181 This clause sets out the requirement for the economic regulator to provide an annual report covering the exercise of is functions, or any activities of the CMA in relation to references made to it by the economic regulator, during the year in relation to transport and storage, and the process for laying such a report to facilitate appropriate Parliamentary scrutiny.

Chapter 4: Special Administration Regime

182 This Chapter provides for the application of a Special Administration Regime (SAR), in the event of a CO_2 transport and storage company insolvency.

183 This will provide the Secretary of State or, with the Secretary of State's permission, the economic regulator, with a power to apply to the courts for the appointment of a special administrator.

184 The detailed rules governing the establishment of a SAR will be set in secondary legislation.

Clause 42: Transport and storage administration orders

185 This clause sets out the meaning of some of the key terms in this Part and the scope of a transport and storage administration order. It requires that the relevant administrator must perform its functions as administrator so as to achieve the objectives set out in clause 43.

Clause 43: Objective of a transport and storage administration

186 This clause provides the objective for an administration order made under this Part and the means by which the administrator has to achieve those objectives.

187 The objective of the administrator for the purposes of the SAR is to commence or continue the activities authorised by the relevant licence of the company with the objective of ensuring the licenced activities can be continued in a manner which is efficient and economic and which ensures the safety and security of the transport and storage network, and that it becomes unnecessary for the order to remain in force. The Government expects that the administrator will take into account any decommissioning requirements when considering what is required to ensure a safe and secure transport and storage network.

188 The means by which the administrator can achieve the objective is by rescuing the company as a going concern or transferring its assets, rights and obligations to one or more companies.

Clause 44: Application of certain provisions of the Energy Act 2004

189 This clause applies sections 156 to 167, 171 and 196 of, and Schedules 20 and 21 to, the Energy Act 2004 with appropriate modifications. Those provisions of the Energy Act 2004 will apply as follows:

190 Section 156, which provides that an application to the court for a SAR to be made by the Secretary of State or by the Authority (in this case the economic regulator), with the consent of the Secretary of State.

191 Section 157, which empowers the court to make an order for a SAR in response to an application in the following circumstances:

- The relevant licensee is unable to pay its debts;
- The relevant licensee is likely to be unable to pay its debts; or
- on petition from the Secretary of State under section 124A of the Insolvency Act 1986, the court is satisfied that it would be just and equitable (disregarding the objective in clause 31(1)) to wind up the licensee company in the public interest.

192 Section 158 which provides that the administrator acts as the agent of the relevant licensee. It further provides that the administrator must exercise management functions for the purpose of achieving the objective of the administration order as quickly and efficiently as is reasonably practicable. Moreover, the exercise of powers and performance of duties must be carried out in a manner which, in so far as it is consistent with the objective of the administration, best protects the interests of the creditors of the company as a whole and, subject to those interests, the interests of the members of the company as a whole;

193 Section 159, which applies the rule making power in section 411 of the Insolvency Act 1986 (c.45). Schedule 20, itself provides for certain provisions, with modifications, of Schedule B1 to the Insolvency Act 1986 (covering detailed rules relating to administration) to have effect.

194 Sections 160 to 164, which are intended to prevent the SAR being frustrated by the granting of prior orders before the Secretary of State or the Authority have been given an opportunity to apply for an administration order.

195 Section 165, which enables the Secretary of State, with the consent of the Treasury, to give a grant or loan to a company in administration to achieve the objective of administration. It also enables the Secretary of State to set the terms of a grant or loan including the requirement that all or part of a grant should be repaid.

196 Section 166 which enables the Secretary of State, with the consent of the Treasury, to indemnify persons in respect of liabilities incurred or loss or damage sustained in connection with the exercise of the administrator's powers and duties and requires the Secretary of State to lay a statement of any such agreement to indemnify persons before Parliament as soon as practicable.

197 Section 167 which enables the Secretary of State, with the consent of the Treasury, to provide guarantees in relation to a relevant licensee in administration and requires the Secretary of State to lay a statement of any guarantees given before Parliament as soon as practicable.

198 Section 171 which provides interpretations of various specific terms and Section 196 which provides interpretations of various general terms.

199 Schedule 20 provides for certain provisions, with modifications, of Schedule B1 to the Insolvency Act 1986 (covering detailed rules relating to administration) to have effect in relation to an administration. This includes the court ending an administration order on the application of the Secretary of State (or the economic regulator or the administrator, with the Secretary of State's permission). This may happen in circumstances where the objective of the order has been achieved, or where the objective has not been achieved and a Transfer Scheme may need to follow.

200 Schedule 21, which provides for the transfers to another company or companies as a going concern of the whole or part of a relevant licensee transportation or permanent storage company's assets to ensure that the objective of the administration is met. Such transfer schemes are to be made by the administrator with the approval of the Secretary of State, and at a time appointed by the court.

Clause 45: Conduct of administration, transfer schemes, etc

201 This clause modifies section 159(3) Energy Act 2004. This works alongside the application of section 159 by section 44(1) of this Bill to give the Secretary of State the power to make insolvency rules under section 411 of the Insolvency Act 1986 for the purposes of this Chapter.

Clause 46: Modification of conditions of licences

202 This clause provides a power to the Secretary of State to make modifications to the conditions and terms of the relevant licence for the purpose of furthering the objective of the administration and may only be exercised when an administration order is in force.

203 This is intended to allow for the Secretary of State to recover financial support that may have been provided to secure the objectives of the SAR.

Clause 47: Modification under the Enterprise Act 2002

204 This clause extends the powers for the Secretary of State to modify or apply certain enactments, which are conferred by sections 248 and 277 of the Enterprise Act 2002 for the purposes of enabling future modifications to this Chapter, in order to ensure that the provisions do not get out of line with wider insolvency legislation.

Clause 48: Power to make further modifications of insolvency legislation

205 This clause provides the Secretary of State with the power to apply certain specified insolvency legislation, including with any necessary modifications, to enable the Secretary of State to amend the detail of the regime if experience of its application highlights any difficulties or areas of concern as well as to respond to changes in insolvency law, especially in relation to administration.

Clause 49: Interpretation of Chapter 4

206 This clause defines the relevant terms for this Chapter.

Chapter 5: Transfer Schemes

Clause 50: Transfer schemes

207 This clause provides for the Secretary of State to make a statutory transfer scheme under which certain property, rights or liabilities of a licence holder can be transferred either to an appropriate body or to the Secretary of State. The statutory transfer scheme can be affected where a termination event has arisen in relation to the licence and is intended to enable the Secretary of State to transfer all or part of the assets to an alternative entity to secure either the ongoing operation of the network, or that part of the network, in an efficient, economic, safe and secure manner, or, the safety and security of the network in

such circumstances where the ongoing operation is no longer viable.

208 It requires the Secretary of State to consider whether any proposed transferee would be able to meet the conditions and requirements of any licence or permit that would be transferred to the person under the proposed scheme. This is intended in particular to ensure that there is proper consideration of the appropriate conditions and requirements associated with any relevant storage licence or permit.

209 It confirms that the transfer scheme should only take effect with the consent of the transferor and transferee.

Clause 51: Consent and consultation in relation to transfers

210 This clause provides for the Secretary of State to consult certain specified persons and persons whom the Secretary of State considers appropriate before effecting a statutory transfer scheme.

Clause 52: Conduct of transfer schemes

211 This clause applies Schedule 4 which describes the scope of what may be transferred and the process by which a transfer scheme may take place. In particular, a transfer scheme may provide for the transfer of any associated licences or permits e.g. any associated storage licence, and that powers and duties which are exercised or required to be performed in connection with the undertaking or property, rights or liabilities to be transferred may also be transferred. It is anticipated that this could be relied on for example to require the transferee to provide any necessary security as required in relation to any associated storage licence. The provisions set out the circumstances in which a transfer scheme may subsequently be modified.

Chapter 6: Miscellaneous and General

Clause 53: Cooperation of storage licensing authority with economic regulator

212 This clause inserts new sections 34A and 34B into the Energy Act 2008 to provide for cooperation and information-sharing between the economic regulator and the relevant CO_2 storage licensing authority, which may be the Oil and Gas Authority or the relevant minister in the Scottish and Welsh administrations and the Department of the Economy in Northern Ireland. This is intended to support the exercise of the functions of the economic regulator, including by ensuring that relevant CO_2 storage licensing authority informs the economic regulator if it becomes aware of circumstances that have arisen or are likely to arise that may affect the activities carried out under the licence.

Clause 54: Amendments related to Part 1

213 Consequential amendments to existing legislation arising from the measures in this Part are set out in Schedule 5.

Clause 55: Interpretation of Part 1

214 This clause sets out definitions of terms for the purpose of interpreting the provisions of this Part.

Part 2: Carbon Dioxide Capture, Storage etc and Hydrogen Production

Chapter 1: Revenue Support Contracts

Clause 56: Chapter 1: Interpretation

215 This clause provides the meanings and definitions of various terms used in Chapter 1.

Clause 57: Revenue support contracts

216 This sets out the Secretary of State's power to make regulations about revenue support contracts. These are referred to as revenue support regulations.

Clause 58: Duties of a revenue support counterparty

217 This clause makes it clear that it is a duty of a person who has been designated as a revenue support counterparty to comply with the regulations and any direction given by virtue of this Chapter. This will include the requirement for a revenue support counterparty to offer to contract with an eligible person when the Secretary of State has directed it to, or an allocation body has given a notification under Clause 71.

218 Subsection (2) enables revenue support regulations to make provision to require a revenue support counterparty to enter into arrangements or to offer to contract for purposes connected to a revenue support contract, or to specify things that a revenue support counterparty must, can or cannot do. It also enables revenue support regulations to make provision about the making of directions from the Secretary of State to a revenue support counterparty. This will enable specific directions to be given in relation to particular contracts or matters.

219 Subsection (4) places a duty on a revenue support counterparty to exercise its functions to ensure that it can meet its liabilities under a revenue support contract.

220 Subsection (5) requires revenue support regulations to include such provision as the Secretary of State considers necessary to ensure that a revenue support counterparty can meet its liabilities under a revenue support contract.

Clause 59: Designation of transport and storage counterparty

221 This clause makes provision for the Secretary of State to designate a person by notice, with the consent of that person, to be the counterparty for transport and storage revenue support contracts. A transport and storage revenue support contract is a contract to be entered into between the counterparty and a holder of a licence under clause 7.

222 Subsection (5) provides that more than one transport and storage counterparty may be designated at one time.

223 Subsection (6) deals with the continuity of counterparties. If the designation of a transport and storage counterparty were to lapse the Secretary of State must as soon as reasonably practicable make a transfer scheme under clause 82 transferring all contracts to that new transport and storage counterparty. This is designed to ensure that where a transport and storage counterparty ceases to be designated the contracts are transferred to a new transport and storage counterparty.

Clause 60: Direction to offer to contract

224 This clause confers a power on the Secretary of State to issue a direction to a transport and storage counterparty to offer a contract to an eligible person, that is a person who holds or who will hold a licence granted under section 7, in accordance with provisions set out in regulations.

Clause 61: Designation of hydrogen production counterparty

225 This clause makes provision for the Secretary of State to designate a person by notice, with the consent of that person, to be a counterparty to hydrogen production revenue support contracts. A hydrogen production counterparty will enter into and manage contracts with eligible low carbon hydrogen producers.

226 Subsection (3) requires that revenue support regulations determine what persons are eligible. Subsection (6) provides that more than one hydrogen production counterparty may be designated at one time.

227 Subsection (7) deals with the continuity of hydrogen production counterparties. If the designation of a hydrogen production counterparty were to lapse the Secretary of State must as soon as reasonably practicable make a transfer scheme under clause 82 transferring contracts to a new hydrogen production counterparty. This is designed to ensure that where a hydrogen production counterparty ceases to be designated the contracts are transferred to a new hydrogen production counterparty.

228 Subsection (8) defines "low carbon hydrogen producer" and "greenhouse gas".

Clause 62: Direction to offer to contract

229 This clause confers a power on the Secretary of State to issue a direction to a hydrogen production counterparty to offer to contract with eligible low carbon hydrogen producers in accordance with provisions set out in regulations.

Clause 63: Designation of carbon capture counterparty

230 This clause makes provision for Secretary of State to designate a person by notice, with the consent of that person, to be a counterparty to carbon capture revenue support contracts. A carbon capture counterparty will enter into and manage contracts with eligible carbon capture entities.

231 Subsection (3) requires that revenue support regulations determine what persons are eligible. Subsection (6) provides that more than one carbon capture counterparty may be designated at one time.

232 Subsection (7) deals with the continuity of carbon capture counterparties. If the designation of a carbon capture counterparty were to lapse the Secretary of State must as soon as reasonably practicable make a transfer scheme under clause 82 transferring contracts to a new carbon capture counterparty. This is designed to ensure that where a carbon capture counterparty ceases to be designated the contracts are transferred to a new carbon capture counterparty.

233 Subsection (8) defines "carbon capture entity" and "storage".

Clause 64: Direction to offer to contract

234 This clause confers a power on the Secretary of State to issue a direction to a carbon capture counterparty to offer a contract to eligible carbon capture entities in accordance with provisions set out in regulations.

Clause 65: Appointment of hydrogen levy administrator

235 This clause makes provision for Secretary of State to make regulations appointing a person to act as a hydrogen levy administrator. Subsection (2) provides that more than one administrator may be appointed at one time.

236 Subsection (5) deals with the continuity of administrators. If the appointment of a levy administrator ceases to have effect, the Secretary of State must as soon as reasonably practicable make one or more transfer schemes under clause 82, to ensure the transfer of any rights and liabilities that the Secretary of State considers appropriate.

Clause 66: Obligations of relevant market participants

237 This clause enables revenue support regulations to make provision requiring gas shippers to pay a hydrogen levy administrator, or for payments to be made to a

hydrogen levy administrator out of the Consolidated Fund, so that a hydrogen production counterparty can make payments under, or in connection with, hydrogen production revenue support contracts.

238 Regulations may also allow for payments to a hydrogen levy administrator to be used to enable a CO_2 transport and storage counterparty to make payments under, or in connection with, CO_2 transport and storage revenue support contracts for purposes connected with hydrogen production revenue support contracts. This would allow levy payments to be used to provide funding for CO_2 transport and storage revenue support contracts in cases where shortfalls in a CO_2 transport and storage licensee's 'allowed revenue' are caused by low carbon hydrogen producers who are expected to be connected to that licensee's transport and storage network and are parties to hydrogen production revenue support contracts – for example, shortfalls caused by a low carbon hydrogen producer leaving a transport and storage network before its contracted capacity booking has expired.

239 Subsection (2) specifies that revenue support regulations may make provision for relevant market participants to make payments to a hydrogen levy administrator for the purpose of meeting other costs. Relevant market participants will be specified in regulations, but no description of relevant market participants may include persons other than those specified in subsection (8). Payments may also be required to enable a levy administrator to hold sums in reserve and to mutualise costs across relevant market participants to cover payments not made by an insolvent or defaulting participant. Subsection (4) enables revenue support regulations to make provision requiring these market participants to provide collateral.

240 Subsection (3) enables the revenue support regulations to make provision about the calculation and determination of amounts that are to be paid by a hydrogen levy administrator, including provision for adjustments or apportionments.

Clause 67: Payments to relevant market participants

241 This clause deals with payments from a hydrogen production counterparty and/or hydrogen levy administrator to market participants who are obliged to pay a hydrogen levy (electricity suppliers, gas suppliers and/or gas shippers).

242 Subsection (1) enables regulations to make provision about payments to be made to such suppliers and/or shippers by a hydrogen production counterparty and/or hydrogen levy administrator, for example the pass through of payments received by a hydrogen production counterparty from a hydrogen producer under a hydrogen production revenue support contract.

243 Subsection (2) sets out that regulations may make provision regarding the calculation or determination of amounts which are owed by a hydrogen production counterparty and/or hydrogen levy administrator and the issuing of notices requiring payment.

244 Subsection (3) enables the Secretary of State to make provision in regulations requiring that customers of market participants who are obliged to pay the levy benefit, in accordance with those regulations, from payments made to those market participants by a hydrogen production counterparty and/or hydrogen levy administrator.

Clause 68: Functions of hydrogen levy administrator

245 This clause enables revenue support regulations to make provision specifying things that a hydrogen levy administrator must, can or cannot do. It also enables revenue support regulations to make provision about the making of directions to a levy administrator.

246 Subsections (3) to (4) enable revenue support regulations to make provision about various matters such as the calculation and collection of amounts owed or collateral to be provided, including by means of the issuing of notices, the enforcement of obligations and the resolution of disputes.

247 Subsection (5) clarifies that any sum which a relevant market participant is required to pay a hydrogen levy administrator by virtue of the revenue support regulations, and which is not paid when it is due by virtue of the regulations, is recoverable as a civil debt.

248 Subsections (6) and (7) enable revenue support regulations to make provision about the use of sums a hydrogen levy administrator holds and for the circumstances where sums held should or should not be paid into the Consolidated Fund.

Clause 69: Power to appoint allocation bodies

249 This clause makes provision for the Secretary of State to appoint a person, with the consent of that person, to act as an allocation body responsible for administering the competitive allocation process for the hydrogen production and carbon capture revenue support contracts. The main purpose of these appointments would be to impose obligations on, and set out functions of, an allocation body in relation to administering the relevant competitive allocation process.

250 Subsection (4) confers a power on the Secretary of State to make provision in regulations about how cessation of an appointment is to take place, including any conditions or transitional provisions. This may include requiring an allocation body to give a specified period of notice when withdrawing its consent to its appointment.

Clause 70: Standard terms of revenue support contracts

251 This clause gives the Secretary of State power to issue and, from time to time, revise standard terms for hydrogen production revenue support contracts and carbon capture revenue support contracts.

252 Subsection (4) places the Secretary of State under a duty to publish standard terms as issued or revised under this clause. Subsection (5) allows the Secretary of State to designate those standard terms that may not be modified under clause 74. Subsection (6) would allow for different standard terms to be issued for different categories of contract (for example, to specifically tailor for waste management projects).

Clause 71: Allocation notifications

253 This clause sets out how an allocation body is to notify a hydrogen production or carbon capture counterparty of an allocation decision. Subsection (1) and (2) states that such a notification must specify the eligible person and such other information as may be required for the purpose of making an offer to contract. Subsection (4) allows for regulations to make further provision, including the circumstances in which a notification may or must be given and the kinds of information that must be specified in a notification.

Clause 72: Allocation of contracts

254 This clause builds on the power in clause 71 and specifies the process by which the Secretary of State may make provision setting out detailed rules about the process for allocating hydrogen production revenue support contracts and carbon capture revenue support contracts. Subsection (1) confers a power enabling the Secretary of State to make provision in regulations setting out how hydrogen production and carbon capture revenue support contracts are to be allocated to eligible persons. Subsection (2) allows

the Secretary of State to make provision in regulations conferring a power on the Secretary of State to set the rules of allocation in an "allocation framework". An "allocation framework" will be produced and published for allocation rounds. The "allocation framework" will act as a "rule book" for how allocation rounds will operate. Subsection (2)(e) confers a power enabling the Secretary of State to make provision about what may or must be included in an "allocation framework".

255 Subsection (3) confers a power enabling the Secretary of State to set out in regulations requirements on the Secretary of State.

256 Subsection (7) allows any allocation framework made to be amended, and subsection (8) provides that subsections (4) to (7) regarding allocation frameworks are subject to any provision in regulations which could set limits on what can be contained in the allocation framework.

Clause 73: Duty to offer to contract following allocation

257 This clause sets out how a hydrogen production or carbon capture counterparty must act upon a notification from an allocation body to offer to contract. Subsection (1) and (2) place a duty on a hydrogen production and carbon capture counterparty to offer a contract to the eligible person specified in a notification and requires that this offer be on the standard terms, or on the standard terms as modified in accordance with the procedure provided for in clause 74.

258 Subsection (3) confers a power on the Secretary of State to make further provision in regulations regarding matters such as how a hydrogen production or carbon capture counterparty is to apply or complete the standard terms in response to a notification and how the eligible person to whom the offer is made may enter into a contract as a result.

Clause 74: Modification of standard terms

259 This clause enables a hydrogen production or carbon capture counterparty to agree modifications to the standard terms with low carbon hydrogen producers or carbon capture entities, on a case-by-case basis, pre-signature. These adjustments may be required because while the standard terms should be applicable for most low carbon hydrogen producers or carbon capture entities, it is not possible for the standard terms to anticipate every technology or project specific issue.

260 This flexibility is constrained in order to reduce the risk of applicants using it to negotiate improvements to the standard terms for competitive reasons. Subsection (3) specifies that a modification can only be agreed if it is both 'minor' and 'necessary', as determined by a hydrogen production or carbon capture counterparty, following any relevant provision made in regulations. Modification can also only be agreed if the standard term has not been designated under clause 70(5) as a term that may not be modified under this clause. Subsection (4) provides for further provision to be made in regulations, including regarding the circumstances in which an applicant may request a modification, the procedure to be followed in requesting a modification, and how a hydrogen production or carbon capture counterparty is to make a determination on such a request.

Clause 75: Sections 71 to 74: supplementary

261 This clause confers a power enabling the Secretary of State to, when making provision under the powers in clauses 71 to 74, make further provision enabling the determination of a matter on a competitive basis and calculations or determinations to be made under regulations, including by such persons and in accordance with such procedure as is specified.

Clause 76: Licence conditions regarding functions of certain allocation bodies

262 Subsection (1) inserts provisions into section 7B of the Gas Act 1986 which specify that a gas system planner licence, under section 7AA of the Gas Act 1986, may include conditions for or in connection with the purpose of facilitating or ensuring the effective performance (whether in relation to Northern Ireland or any other part of the United Kingdom) of hydrogen production allocation body functions under Chapter 1 of Part 2 of this Bill, at times when the hydrogen production allocation body holds a licence under section 7AA.

263 Subsection (2) sets out that where GEMA proposes to modify a gas system planner licence under section 23 of the Gas Act 1986 by adding, removing or altering a condition such as is mentioned in section 7B(5ZA) of the Gas Act 1986 (as inserted by subsection (1) of this clause) and that condition relates to functions of a hydrogen production allocation body that are exercisable in relation to Northern Ireland, GEMA must notify the Department for the Economy in Northern Ireland in accordance with section 23 of the Gas Act 1986.

Clause 77: Further provision about designations

264 Under subsection (1) the designation of a person as a revenue support counterparty can be revoked by the Secretary of State. Designation will also cease to have effect if a revenue support counterparty elects to withdraw its consent and gives at least 3 months prior written notice to the Secretary of State of that withdrawal.

265 Subsections (2) and (4) deal with the continuity of counterparties.

Clause 78: Application of sums held by a revenue support counterparty

266 Subsection (1) enables the revenue support regulations to make provision about the allocation of sums in circumstances where a revenue support counterparty is unable to fully meet its liabilities under a revenue support contract. In making such provision, the Secretary of State must have regard to the principle that sums should be apportioned in proportion to the amounts which are owed (subsection (3)).

267 Subsections (4) and (5) enable the revenue support regulations to make provision about the use of sums a revenue support counterparty holds and for the circumstances where monies received should or should not go to the Consolidated Fund.

Clause 79: Information and advice

268 This clause enables the revenue support regulations to make provision to ensure that information and advice required for the functioning of the schemes is provided to the bodies requiring it at appropriate points, including from parties to revenue support contracts, the Gas and Electricity Markets Authority, relevant market participants, and any other person specified in revenue support regulations. It enables revenue support regulations to make provision governing the use and protection of information so received to ensure it is handled in an appropriate manner.

269 It will also allow the Secretary of State to monitor the schemes and for the Secretary of State to require advice from various bodies, including a revenue support counterparty, a hydrogen levy administrator, the Gas and Electricity Markets Authority, and an allocation body for making decisions about the running of the schemes.

Clause 80: Enforcement

270 This clause deals with the enforcement of requirements under revenue support regulations and regulations under clause 69.

271 Subsection (1) enables regulations to make provision for the obligations of certain relevant market participants provided for by revenue support regulations to be enforceable by the GEMA in Great Britain as if they were relevant requirements under Part 1 of the Electricity Act 1989 and/or sections 28 to 30 of the Gas Act 1986. Similarly, in the case of Northern Ireland, the clause makes provision for the obligations of certain relevant market participants to be enforceable by the Northern Ireland Authority for Utility Regulation (NIAUR) as if they were relevant requirements under Part 6 of the Energy (Northern Ireland) Order 2003. Subsection (2) makes clear that enforcement includes enforcement under the terms of a licence. This means that a breach can be treated, in effect, as if it were a breach of a licence condition, thus allowing the GEMA and/or NIAUR to use its relevant enforcement powers such as issuing an order to secure compliance, imposing financial penalties and licence revocation.

272 Subsections (3) and (4) enable regulations to make provision for requirements that may be imposed on the holder of a gas system planner licence (expected to be the Independent System Operator and Planner) as hydrogen production allocation body by or under revenue support regulations or regulations under clause 69 (including requirements in respect of functions of the body that relate to Northern Ireland) to be enforceable by the GEMA as if they were relevant requirements under sections 28 to 30O of the Gas Act 1986.

Clause 81: Consultation

273 This clause requires that the Secretary of State must consult the Department for Economy in Northern Ireland, and Scottish and Welsh Ministers before making or amending revenue support regulations, where the matter being consulted on is within the legislative competence of the relevant devolved legislature. In addition, the Secretary of State must consult other persons as he or she considers appropriate.

Clause 82: Transfer schemes

274 This clause sets out the process by which the property, rights and liabilities of a revenue support counterparty, hydrogen levy administrator or allocation body may be transferred from one revenue support counterparty, hydrogen levy administrator or allocation body to another, should this prove necessary. This could prove necessary either because one of these bodies no longer wishes to continue in role, or because it has become inappropriate for them to be continue in one of these roles. It also sets out the process by which property, rights and liabilities of a hydrogen levy administrator are transferred to the Secretary of State, should this prove necessary. A scheme may provide for compensation for any property that is required to be transferred, where this is appropriate.

Clause 83: Modification of transfer schemes

275 This clause enables the Secretary of State to modify transfer schemes. Modifications made after a transfer has taken effect may only be made by agreement with the transferor and/or transferee affected by the modification. Modifications come into effect on a date decided by the Secretary of State. That date may be the date on which the original transfer scheme took effect.

Clause 84: Shadow directors, etc

276 This clause makes it clear that, in exercising their regulatory controls over a revenue support counterparty, neither the Secretary of State nor an allocation body are to be deemed to be in any way managing or controlling a counterparty in such a way that would class them as, for example, “shadow directors”. Similar provisions apply in respect of the Secretary of State’s exercise of regulatory controls over a hydrogen levy

administrator and an allocation body.

Clause 85: Modifications of licences etc for purposes related to levy obligations

277 This clause sets out the Secretary of State's power to make modifications of certain licences as well as documents maintained in accordance with those licences or agreements that give effect to such documents for the purpose of facilitating or supporting the administration and enforcement of a hydrogen levy.

278 Subsections (1) and (2) provide the Secretary of State with a power to modify electricity transmission licences and gas transporter licences of energy market participants in Great Britain. The provisions also enable the Secretary of State to modify the standard conditions of such licences as well as documents maintained in accordance with conditions of such licences (such as industry codes) or agreements that give effect to such documents. Subsections (3) and (4) provide a similar power in respect of certain energy market licences in Northern Ireland, enabling the Secretary of State to modify the following licences: electricity transmission licences, electricity distribution licences, SEM operator licences, and licences to convey gas. The provisions also enable the Secretary of State to modify the standard conditions of such licences as well as documents maintained in accordance with conditions of such licences (such as industry codes) or agreements that give effect to such documents.

279 Subsection (5) specifies that the Secretary of State can only make such modifications for the purpose of facilitating or supporting the administration and/or enforcement of a hydrogen levy.

280 Subsections (6A) and (6B) provide further clarity regarding the types of modifications that the Secretary of State can make using the powers under subsections (1) to (4).

281 Subsections (7) and (8) set out duties of the GEMA and NIAUR with respect to any modifications of standard licence conditions made by the Secretary of State under the powers in subsections (1) to (4).

282 Subsection (9) sets out the consultation requirements in relation to this clause. Before making a modification, the Secretary of State must consult the holder of any licence being modified, and such other persons as the Secretary of State considers it appropriate to consult. Subsection (10) enables the requirement in subsection (9) to be satisfied by consultation before, as well as after, the passing of this Bill.

Clause 86: Electricity system operator and gas system planner licences: modifications

283 Subsections (1) and (2) provide the Secretary of State with a power to modify the electricity system operator licence and the gas system planner licence (as well as documents maintained in accordance with those licences or agreements that give effect to such documents) for the purpose of facilitating or ensuring the effective performance of functions of hydrogen production allocation bodies and other related functions under Chapter 1 of Part 2 of the Bill.

284 Subsections (4) and (5) specify that modifications under subsections (1) and (2) may only make provision in relation to times when the person holding the licence is a hydrogen production allocation body, including consequential or transitional provision in relation to times when it is no longer the case that the person holding the licence is a hydrogen production allocation body.

285 Subsection (6) provides further clarity regarding the types of modifications that the Secretary of State can make using the powers under subsections (1) and (2).

286 Subsection (7) sets out the consultation requirements in relation to this clause. Before

making a modification, the Secretary of State must consult the holder of any licence being modified, the GEMA and such other persons as the Secretary of State considers it appropriate to consult. Subsection (8) enables the requirement in subsection (7) to be satisfied by consultation before, as well as after, the passing of this Bill.

Clause 87: Sections 85 and 86: supplementary

287 This clause deals with the Parliamentary procedure for modifications made using clauses 85 and 86 and makes supplementary provisions regarding the scope of those modification powers, as well as relevant consequential amendments to existing legislation.

288 Subsections (2) to (7) specify that, before making modifications under these powers, the Secretary of State must lay a draft of the modifications before Parliament, where they will be subject to a procedure analogous to the draft negative resolution procedure used for statutory instruments.

289 Subsections (8), (9), and (12) further clarify the scope of the modification powers.

290 Subsection (10) sets out a requirement on the Secretary of State to publish details of any modifications made under the powers.

291 Subsections (13) and (14) make consequential amendments to section 81 of the Utilities Act 2000 and section 137 of the Energy Act 2004.

Chapter 2: Decommissioning of Carbon Storage Installations

Clause 88: Financing of costs of decommissioning etc

292 This clause gives the Secretary of State a power to make regulations regarding the provision of security for decommissioning costs associated with CCUS transport and storage networks. These regulations may include provisions about (amongst other things): the estimation of decommissioning costs; and the management of decommissioning funds, as security for these costs.

Clause 89: Section 88: supplementary

293 This clause sets out supplementary provisions which may be included in any regulations made under clause 85: Financing of costs of decommissioning etc, such as provisions on supplying information and enforcement, and sets out the parliamentary procedure for any such regulations.

Clause 90: Provisions relating to Part 4 of the Petroleum Act 1998

294 The decommissioning of offshore installations and pipelines used for carbon dioxide storage purposes is covered by Part 4 of the Petroleum Act 1998, as modified by section 30 of the Energy Act 2008 ("Modified Part 4 PA"). This clause amends section 30 of the Energy Act 2008, including: amending the definition of carbon storage installation; clarifying that notices, requiring the recipient to submit a decommissioning programme, may be served on those with a licence under section 18 of the Energy Act 2008; and enabling further modifications to Modified Part 4 PA, in relation to the establishment of decommissioning funds to meet the decommissioning costs, as set out in clause 85: Financing of costs of decommissioning etc. This clause also includes amendments to s 29(6) of the Petroleum Act 1998.

Clause 91: Change of use relief: installations

295 Sections 30A and 30B of the Energy Act 2008 make provision for a person to qualify for

change of use relief on installations and submarine pipelines converted for CCS demonstration projects (the latter term having the meaning given in section 7 of the Energy Act 2010). This relief removes the ability for the Secretary of State, in some circumstances, to take the following steps under Part 4 of the Petroleum Act 1998:

- issue a notice under section 29(1) (requiring the submission of an abandonment programme for an installation); or
- to impose a decommissioning obligation under section 34.

296 This clause makes amendments to Section 30A of the Energy Act 2008, broadening the scope of change of use relief: so that it applies to eligible CCS installations more generally; and amending the trigger point to qualify for such relief.

Clause 92: Change of use relief: carbon storage network pipelines

297 Similar to clause 91: Change of use relief: installations, this clause makes amendments to Section 30B of the Energy Act 2008, broadening the scope of change of use relief: so that it applies to eligible carbon storage network pipelines more generally; and amending the trigger point to qualify for such relief.

Clause 93: Change of use relief: supplementary

298 This clause gives the Secretary of State a power to make regulations regarding the provision of information where this relates to change of use relief. This clause also makes a consequential amendment to section 105 of the Energy Act 2008.

Chapter 3: Strategy and Policy Statement

Clause 94: Designation of strategy and policy statement

299 While day-to-day regulatory decisions will be made independently by the economic regulator, policy direction for CCUS will continue to be directed by Government. This clause provides that the Secretary of State may designate a strategy and policy statement for CCUS. Such a statement would set out: the strategic priorities for CCUS policy; the particular outcomes to be achieved as a result of the implementation of that policy; and the roles and responsibilities of persons who are involved in implementing that policy or who have other functions that are affected by it.

Clause 95: Duties with regard to considerations in the statement

300 This clause imposes a duty on the economic regulator to have regard to specified matters when carrying out functions and provides that the economic regulator and the Secretary of State must carry out their respective CCUS-related functions under Parts 1 and 2 of this Bill in the manner considered best calculated to further the delivery of the policy outcomes set out in the CCUS strategy and policy statement.

Clause 96: Review

301 This clause establishes timeframes and circumstances for reviewing a CCUS strategy and policy statement. CCUS strategy and policy statements should be reviewed no more frequently than once a Parliament, to ensure a stable and predictable regulatory landscape for investors, unless the circumstances specified in this clause have occurred. These circumstances include that a general election has taken place, or that there has been a material change in CCUS policy.

Clause 97: Procedural requirements

302 This clause establishes procedural and consultation requirements which the Secretary of State must observe in developing and publishing a strategy and policy statement for

CCUS and before the Secretary of State may designate it. This follows a similar procedural precedent for designating a Strategic Policy Statement under Part 5 of the Energy Act 2013 and is also intended also to enable a single Strategic Policy Statement which covers both energy and CCUS policy but relies on the powers in both the Energy Act 2013 and Energy Bill, if appropriate.

303 The consultation requirements under this provision apply to a Strategic Policy Statement before it is designated and in respect of any amendments that are proposed to a Strategic Policy Statement following a review under clause 96. It is the Government's intention that for an initial Strategic Policy Statement, and for subsequent material amendments that may be proposed as a result of the review process set out in clause 96, that in addition to the required consultees set out at clause 97(4), further consultation as provided for at clause 97(5)(b) would follow the Government's consultation principles[35].

Chapter 4: Carbon Dioxide Storage Licences

Clause 98: Specified provisions in carbon dioxide storage licences

304 This clause sets out that amendments will be made by Schedule 6 to the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 in order to introduce new ex-ante (before the event) powers for the Oil and Gas Authority (OGA) regarding the change of control of a company in relation to all Carbon Storage Licensees. This is to ensure that the governance, technical and financial capability of a Licensee in possession of a Carbon Storage Licence is not undermined by an undesirable change of control. This is to replace the OGA's existing ex-post (after the event) powers to intervene after the change of control of a Licensee.

Clause 99: Content of storage permits under carbon dioxide storage licences

305 This clause amends regulation 8 of the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 to allow the revocation of storage permits under Carbon Dioxide Storage Licences for breach of the change in control provisions by the operator.

Clause 100: Offences relating to carbon dioxide storage licences

306 This clause amends Section 23 of the Energy Act 2008 ("Section 23") regarding existing offences in relation to Carbon Storage Licensees. This is to ensure that relevant Licensees do not commit an offence under that legislation in relation to the change of control of a company, in circumstances where prior consent from the OGA has not been obtained.

Clause 101: Power of OGA to require information about change in control of licence holder

307 This clause amends section 29 of the Energy Act 2008 to grant powers to the OGA to request information required by it to exercise its functions in relation to a change or potential change of control of a Carbon Storage Licensee.

Chapter 5: General

Clause 102: Access to infrastructure

308 This clause enables the Secretary of State to make regulations regarding access to CO_2 transport and storage infrastructure, and that these regulations may amend, revoke, or replace or make provision similar or corresponding to, the Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011 (S.I. 2011/2305) and the Storage of Carbon

[35] https://www.gov.uk/government/publications/consultation-principles-guidance

Dioxide (Access to Infrastructure) Regulations (Northern Ireland) 2015 which govern access rights to CO_2 transport and storage infrastructure.

309 Regulations made under this power may confer functions on any person, and may make provision regarding enforcement in relation to access rights. In relation to enforcement, regulations may create criminal offences or impose civil penalties, and may confer jurisdiction on a court or tribunal. Where regulations impose a civil penalty, they must also provide for a right of appeal against the imposition of the penalty.

Clause 103: Financial assistance

310 This clause makes provision for the Secretary of State to incur expenditure and provide financial assistance for the purpose of encouraging, supporting or facilitating:

- The transportation and storage of carbon dioxide;
- Carbon dioxide capture facilities, which operate (or are to operate) in association with facilities for the transportation and storage of carbon dioxide;
- Low carbon hydrogen production;
- Transportation and storage of hydrogen.

311 The main purpose of this power is to enable the Government to incur such costs or liabilities and provide such financial assistance as the Secretary of State considers necessary and proportionate to incentivise investment in, and facilitate the delivery of carbon capture, transportation and storage of carbon dioxide and hydrogen, and low carbon hydrogen production. Financial assistance in relation to carbon capture and storage may include, for example, support for industrial carbon capture, waste carbon capture, bioenergy with carbon capture or direct air capture.

312 The scope of the financial assistance power in this Part of the Bill allows for financial support to be provided for a range of CCUS activities, should such support be considered appropriate. This compares to the narrower scope of the economic regulation and licensing framework in Part 1 of the Bill which is concerned, initially, with the licensing of pipeline transportation of carbon dioxide for geological storage, given the natural monopoly characteristics of these transport and storage assets.

313 Subsection (2) and (3) contain specific examples of where the Secretary of State may incur expenditure. Financial assistance may be provided by way of grants, loans, guarantees or indemnities or by the provision of insurance, or in any other form, and may be provided subject to conditions or provided under a contract.

314 For the purpose of this section, subsection (6) makes provision about the interpretation of certain terms.

Part 3: New Technology

Chapter 1: Low-Carbon Heat Schemes

Clause 104: Low-carbon heat schemes

315 This clause provides the Secretary of State with powers to set up a scheme through secondary legislation to encourage the sale and installation of low-carbon heating technologies, such as electric heat pumps. Subsection (3)(b) allows for this to include, for instance, hybrid heat pump systems that involve both a heat pump and a fossil fuel boiler.

Clause 105: Application of scheme

316 This clause provides for secondary legislation ('the regulations') to define the 'participants' who will be subject to targets under a low-carbon heat scheme, for instance companies involved in the manufacture and supply of a certain type of product. It also provides for the determination of the technologies, within the broader set established in clause 104, to which those targets will apply.

317 Subsection (5) allows the regulations to specify circumstances in which credit for activities may be carried from one period to the next; a degree of 'banking' and/or 'borrowing' of credits is sometimes a feature of such schemes.

Clause 106: Setting of targets etc

318 Building on clause 105, this clause makes further provision in relation to how targets for a scheme may be set in or under the regulations. In particular, it provides for targets to differ for different low-carbon heating technologies or for different weightings to be given to how different technologies or activities meet the targets.

319 This would allow, for example, for standalone electric heat pumps to be treated differently under the scheme from hybrid heat pumps that incorporate or operate in conjunction with a fossil fuel combustion appliance.

Clause 107: Further provision about scheme regulations

320 This clause sets out various operational and administrative features of the scheme that the regulations may (and, in the case of determinations about meeting targets under subsection (1), must) provide for.

321 Subsection (3) allows the regulations to specify how either scheme targets or credit for activities related to meeting targets, in the form of certificates, might be 'pooled' among or transferred between parties, including (in the case of certificates and transfers) parties not otherwise in scope of the scheme targets. This would allow, for instance, for the trading of certificates which parties could acquire and use as part of meeting their target for a given period, instead of carrying out relevant activities themselves. If pursued, this could allow for the emergence of a market in such certificates.

322 Subsection (4) provides for regulations to be made about the consequences or options for parties failing to meet targets under the scheme. This could include, for instance, establishing a framework of payments in lieu, sometimes referred to in similar schemes as 'buyout' payments.

Clause 108: Administration of scheme

323 This clause is largely self-explanatory. Subsection (6) provides for limited circumstances under which scheme regulations could make amendments to primary legislation if appropriate in order to enable a public authority appointed as a scheme's administrator to carry out its functions under the scheme.

Clause 109: Enforcement, penalties and offences

324 This clause provides for the regulations to enable the administrator to conduct a range of enforcement activities. It also provides for the regulations to specify civil penalties for non-compliance with requirements of a scheme and to create offences. Subsection (7) specifies that the sanction for such offences would be a fine. Non-compliance could include, for instance, failure to provide required information, failure to make payments in lieu of unmet targets, or making false or fraudulent representation to the scheme administrator.

325 Subsection (2) provides for the regulations to specify conditions in which an administrator may treat one party's targets or activities under the scope of the scheme as another's. This would allow, for instance, for targets and activities towards meeting targets to be applied to a group of parties collectively, rather than at the level of individual companies or subsidiaries.

Clause 110: Application of sums paid by virtue of section 107(4) or 109(3)

326 This clause is self-explanatory.

Clause 111: Appeals

327 This clause is self-explanatory.

Clause 112: Scheme regulations: procedure etc

328 This clause establishes procedural requirements for the making of scheme regulations. These depend on the matters covered in the regulations. Subsection (2) sets out when such a statutory instrument would be subject to the affirmative parliamentary procedure. This includes the creation of new offences, the amendment of primary legislation, and a class of changes that would substantially alter or extend the scope of the scheme, for instance to apply low-carbon heat targets to a new class of parties or technologies. Other statutory instruments relating to the scheme would be made under the negative resolution procedure (subsection (1)).

Clause 113: Interpretation of Chapter 1

329 This clause is self-explanatory.

Chapter 2: Hydrogen Grid Conversion Trials

Clause 114: Modifications of the gas code

330 The provisions in this clause only apply to a hydrogen heat grid conversion trial, which is defined in subsection (1).

331 This clause makes certain modifications to the Gas Act 1986. These modifications build on the existing provisions in the Gas Act 1986, in particular on powers of entry, and seek to enable the safe and effective delivery of the hydrogen heat village trial.

332 Subsections (2) to (5) make modifications to the Gas Act 1986 so that the person running the trial has clear grounds to enter private properties to:

a. carry out any essential works for the purposes of the trial, including safety measures such as replacing appliances and installing and testing safety valves;

b. undertake inspections and tests for the trial such as safety checks; and

c. disconnect the gas supply in a property.

333 The clause also modifies the Rights of Entry (Gas and Electricity Boards) Act 1954 so that the provisions in that Act which relate to a relevant power of entry apply as though references to a gas operator include a person conducting the trial.

Clause 115: Regulations for protection of consumers

334 Subsection (1) provides the Secretary of State with a power to make regulations by statutory instrument to require a person conducting the trial to follow specified steps to ensure consumers are appropriately informed about the trial and the need for them to be disconnected from their gas supply before it happens.

335 This clause also provides the Secretary of State with a power to make regulations to

introduce consumer protections for people who are, or are likely to be, affected by the trial. A list of example provisions is provided in subsection (5).

Chapter 3: Miscellaneous

Clause 116: Fusion energy facilities: nuclear site licence not required

336 This clause amends the Nuclear Installations Act 1965 to confirm the exclusion of fusion energy facilities from nuclear site licencing requirements.

337 This clause also defines the term "fusion energy facility."

Clause 117: Treatment of recycled carbon fuel and nuclear-derived fuel as renewable transport fuel

338 This amendment provides for recycled carbon fuels and fuels derived from nuclear energy to be able to be treated as a renewable transport fuel for the purposes of renewable transport fuel orders, as described in Chapter 5 of Part 2 of the Energy Act 2004.

339 This clause also defines the terms 'recycled carbon fuel' and 'nuclear-derived fuel'.

Clause 118: Climate Change Act 2008: meaning of "UK removals"

340 This clause amends the Climate Change Act 2008 to expand the types of greenhouse gas removals (GGR) which count towards UK carbon budgets. The scope will be expanded beyond solely GGR removal processes methods based in the land-use sectors to include a broader range, including 'engineered' methods such as Direct Air Carbon Capture and Storage (DACCS) and Bioenergy with Carbon Capture and Storage (BECCS).

Part 4: Independent System Operator and Planner

Clause 119: The Independent System Operator and Planner ("the ISOP")

341 This clause introduces the concept of the ISOP and describes what it will do. It includes (in subsection (3)) a representative, but not exhaustive, list of its initial functions (activities) and notes (subsection (2) that functions are (or will be) typically conferred on the ISOP by legislation (including this Act) or instruments made under legislation (for example licences or codes).

342 The ISOP has hitherto been referred to in consultation and other documentation as the Future System Operator (FSO).

Clause 120: Designation etc

343 This clause empowers the Secretary of State to designate a person (likely a company) by notice as the ISOP and sets out that a notice designating a person as the ISOP must state when it comes into effect. The Secretary of State must ensure that, once the first ISOP has been designated, there is always one (and only one) person designated as the ISOP at any given time. This clause also empowers the Secretary of State to revoke the ISOP designation by notice (again, stating when the notice comes into effect). The Secretary of State must publish any designation or revocation notice.

Clause 121: Duty to promote particular objectives

344 This clause sets out the ISOP's main objectives. Three objectives are listed and the ISOP is required to carry out its functions in a way it considers will best achieve those objectives.

345 In the Climate Change Act 2008 a duty is imposed on the Secretary of State to ensure

that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline ('net zero'). The Secretary of State also has a duty under this Act to ensure that the net UK carbon account for a budgetary period does not exceed the carbon budget. The 'net-zero objective' in this Bill imposes a duty on the ISOP to carry out its functions in a way that it considers is best calculated to promote the net zero objective, by enabling the Secretary of State to meet net zero and to not exceed the carbon budgets. While not directly building renewable energy generation assets or making final decisions on future generation mixes, the ISOP is expected during the course of operating, planning and coordinating the system to drive net zero outcomes by proactively identifying and creating opportunities to facilitate the transition.

346 The 'security of supply' objective imposes a duty on the ISOP to carry out its functions in a way that it considers best calculated to ensure the security of supply of electricity and gas to existing and future consumers. Security of supply refers to supply meeting demand and the maintaining of resilience in the system. This duty could cover putting in place and maintaining electricity system restoration plans and arrangements if security of supply is compromised. This responsibility could also involve seeking continuity of electricity to end users, through maintaining physical and cyber resilient systems, and ensuring sufficient electricity capacity to meet demand.

347 The 'efficiency and economy' objective imposes a duty on the ISOP to carry out its functions in a way that it considers best calculated to promote a coordinated electricity and gas system that operates efficiently and economically. This objective must also be applied by the ISOP with regard to the activities carried out by those engaged in 'relevant activities' as defined in this clause.

348 Although some of the ISOP's functions may be more focused on matters relating to one or other of these three objectives, the ISOP will need to have regard to all of them wherever they are relevant – if necessary, making appropriate trade-offs where they may conflict. The balance of trade offs will be for the ISOP to determine, although it must have regard to the priorities in the Strategic Policy Statement for energy once this is designated for the ISOP (see further clause 123).

349 Subsections (5), (6) and (7) define 'relevant activity' in a way that, broadly speaking, includes any activity that is licensable under the Electricity Act 1989 or Gas Act 1986, or any other business activity in the energy supply chain. Consumers passively consuming energy are not caught by this definition.

Clause 122: Duty to have regard to particular matters

350 Alongside the objectives set in the previous clause, the ISOP, when carrying out its functions must have regard to the need to facilitate competition and the desirability of facilitating innovation in relation to relevant activities and to the consumer and whole system impacts of relevant activities (as defined in the previous clause).

351 As regards consumer impacts, the ISOP have regard to both to how they are affected (or are likely to be affected) by the behaviour of those engaged in relevant activities and to the impact of consumers behaviour on the carrying out of relevant activities.

352 The ISOP will take a whole-system approach to coordinating and planning Great Britain's energy system, looking across electricity, gas and other emerging markets such as hydrogen and carbon capture usage and storage. As the system develops, each relevant activity can interact with each other relevant activity, and related consumer behaviour: the ISOP is required to have regard to these interactions.

353 The intention is for the ISOP to be alive to the possibilities of new and better ways of

doing things, and, working with industry, to facilitate innovation. Examples could include the better collection and use of data, and various digital technologies, to improve consumer experience and outcomes.

Clause 123: Duty to have regard to strategy and policy statement

354 The Government has the power, in the Energy Act 2013, to designate a Strategy and Policy Statement (SPS). This clause imposes a duty on the ISOP to have regard to this SPS as defined in subsection (4). An SPS is a statement prepared and designated by the Secretary of State that sets out strategic priorities and policy outcomes of the Government's energy policy as well as the roles and responsibilities of those who are involved in implementing that policy. The SPS provides a steer to the ISOP at a strategic level, whilst maintaining day to day operational independence.

355 The ISOP must notify the Secretary of State if, at any point, it thinks that a policy outcome in the SPS will not be met. The notice must include the reasons behind the conclusion and any steps the ISOP is or might take to deliver the policy outcome.

356 Subsection (5) to subsection (11) amend Part 5 (SPS) of the Energy Act 2013 to reflect the existence of the ISOP and allow the Secretary of State to review the SPS in connection with the designation of the ISOP.

Clause 124: Licensing of electricity system operator activity

357 The Gas Act 1986 and The Electricity Act 1989 prohibit certain activities unless the person carrying on that activity is licensed, exempt from the requirement for a licence, or eligible (under the Gas Act 1986 only) for an exception to the prohibition on unlicensed activities.

358 There is a set of standard licence conditions for most licensable activities. Licensees are obliged to comply with the licence conditions for their type of licence from the day the licence is granted. This clause makes amendments to the Electricity Act 1989 to:

a. Define the new 'electricity system operation' licensable activities. The definition is closely based on the 'system operation' aspects of transmission as currently defined in s.4(4) Electricity Act 1989, since the ISOP's initial electricity functions will be essentially those currently carried out by National Grid Electricity System Operator.

b. Create the new 'electricity system operator licence' and empower the Secretary of State to grant the first licence.

c. Ensure that the holder of the 'electricity system operator licence' also holds the 'gas system planner licence'.

d. Ensure that if a person ceases to hold the 'gas system planner' licence it ceases to hold the 'system operator' electricity licence.

Clause 125: Direction for transmission licence to have effect as electricity system operator licence

359 This clause empowers the Secretary of State to direct that an existing transmission licence becomes the ISOP's electricity system operator licence. This would be an alternative to revoking the existing licence and granting a completely new electricity system operator licence. The Secretary of State is empowered to make appropriate modifications to the existing licence when making such a direction. The direction must be published.

Clause 126: Licensing of gas system planning activity

360 This clause makes amendments to the Gas Act 1986 that mirror the electricity license in clause 120 1but in respect of a 'gas system planner licence'. The Bill provides for the ISOP to have a narrower scope in relation to gas than in relation to electricity. In relation to gas, its functions do not include day-to-day system operation or short-term planning. Instead, its functions are limited to longer-term planning and forecasting in relation to the gas network and markets (comprising a relatively small part of the current functions of National Grid Gas).

Clause 127: Modification of licences etc

361 This clause empowers the Secretary of State or Ofgem to make changes to licences and codes and revoke licences in preparation for or in relation to the designation of the ISOP. This power expires three years after the first designation of the ISOP.

362 Subsection (4) extends this power to allow for licence or code modifications made in relation to a code body, in this case Elexon.

Clause 128: Procedure relating to modifications under section 127

363 This clause sets out procedural rules for making licence modifications under the power in section 127. These include a requirement that before making a modification to licences or codes, the Secretary of State or Ofgem must publish a notice explaining the reasons for the changes, the proposed modifications and when they will take effect. They must also notify the persons listed in this clause and consider any representations made within the specified period in the notice or before the changes take effect.

Clause 129: Provision of advice, analysis or information

364 This clause imposes a duty on the ISOP to provide advice, analysis or information requested by the Government or Ofgem. The ISOP is required to comply with requests as and when requested, so far as reasonably practicable.

Clause 130: Power to require information from regulated persons etc

365 This clause empowers the ISOP to request information to help it fulfil its functions. Information can be requested from those engaged in, or whom the ISOP reasonably considers intend to engage in, relevant activities (as defined in 121(5)). The request must be responded to, as far as practicable, in the time, form and manner specified in the notice by the ISOP.

366 The requirement to provide information is enforceable either by Ofgem (where the request is made to a person who is otherwise subject to Ofgem enforcement action under the Electricity Act 1989 or Gas Act 1986), or by the ISOP in civil proceedings.

Clause 131: Duty to keep developments in energy sector under review

367 This clause imposes a duty on the ISOP to monitor and review developments that may be relevant to the delivery of its functions. This could include, for example, technological changes, government policies or market shifts.

Clause 132: Transfers

368 This clause introduces Schedule 7 which sets out the Secretary of State's power to make transfer schemes in connection with the designation of a person as the ISOP and connected provisions.

Clause 133: Pension arrangements

369 This clause introduces Schedule 8, which creates the powers to make arrangements regarding pensions in connection with the establishment of the ISOP.

Clause 134: Financial assistance for the ISOP

370 This clause grants the Secretary of State the power to provide financial assistance to the ISOP, and (where the Secretary of State considers this appropriate) to set conditions which this financial assistance is subject to. Subsection (2) provides an indicative list of the types of financial assistance that may be provided.

Clause 135: Cross-sectoral funding

371 The ISOP will operate across both the electricity and gas sectors and this clause facilitates that work by allowing cross-sectoral funding.

372 Currently the Electricity Act 1989 and Gas Act 1986 limit the extent to which the holders of a licence granted under one of these Acts, can consider the interests of consumers of a holder of licences under the other Act.

373 This clause removes the barriers in section 7 of the 1989 Act and section 7B of the 1986 Act, so as to allow payments raised in one sector to be used to benefit consumers in the other. The removal of these barriers will enable the ISOP to coordinate and ensure strategic planning across the energy sector more effectively.

374 The clause introduces a provision, in section 9 of each Act, to expand licence holders' statutory duties and require them to have regard to the interests of consumers of the other energy sector where directed by their licence. Similar provision is not required for Ofgem who are already given in each Act discretion to have regard to the consumers of the other sector.

Clause 136: Principal objective and general duties of Secretary of State and GEMA under Part 4

375 This clause ensures that when carrying out various functions in relation to the ISOP, the Secretary of State and Ofgem, must have regard to the principal objective and general duties, as defined in the Electricity Act 1989 and Gas Act 1986. The principal objective of the Secretary of State and Ofgem can be characterised as protecting the interests of existing and future electricity and gas consumers. General duties include promoting effective competition in the energy sector, having regard to security of supply and securing a healthy energy market.

376 This practice has precedents in earlier energy legislation where new functions are given to the Secretary of State or Ofgem in relation to electricity or gas that would not otherwise be subject to the principal objective and general duties (e.g., s.190 Energy Act 2004, s.102 Energy Act 2008, s.22(9) and (10) Energy Act 2011, s.39 and 53 Energy Act 2013, s.6(12) and (13) Smart Meters Act 2018).

377 Subsection (1) states that the Secretary of State must have regard to the above principal objective and general duties, when carrying-out new functions relating to the power to designate, revoke and order that an existing transmission licence becomes the ISOP's electricity system operator licence.

378 Subsections (2) and (3) extends the requirement to have regard to the principal objective and general duties to the power of making changes to licences and codes and revoking licences in preparation for or in relation to the designation of the ISOP, conditions to make these modifications and Ofgem's enforcement functions in relation to information requests to regulated persons.

Clause 137 Minor and consequential amendments

379 This clause introduces Schedule 9, which makes minor and consequential amendments

to other acts.

Clause 138: Interpretation of Part 4

380 This clause provides the meaning and definitions of various terms used in Part 4.

Clause 139: Regulations under Part 4

381 This clause states that the powers to make regulations under the Bill are exercisable by statutory instrument.

Part 5: Governance of Gas and Electricity Industry Codes

Clause 140: Designation of codes etc

382 This clause defines the term 'designated document' and empowers the Secretary of State to create and amend lists of designated documents. The term 'designated document' is meant to refer to the energy codes and engineering standards that are within the scope of this new governance framework, which is where the detailed rules of the electricity and gas systems are set out. These rules cover everything from how buyers and sellers must interact in commercial markets to the technical specifications required to connect to relevant networks.

383 The ability for the Secretary of State to create and amend lists of designated documents is necessary because there is no universal definition of what should be considered a 'designated document'. The total number of designated documents may also vary over time.

Clause 141: Meaning of "code manager" and "code manager licence"

384 A 'code manager' will be required to hold a 'code manager licence' granted by the GEMA before it is able to perform its code management function. This clause defines what is meant by both of these terms.

Clause 142: Designation of central systems

385 A 'designated central system' is an IT system connected with the maintenance, operation, or data storage of a designated document. Each one of these systems has a 'responsible body' who is responsible for operating, or procuring the operation of, these systems.

386 This clause empowers the Secretary of State to create lists of designated central systems and responsible bodies, which will be used to identify which systems and bodies fall within the scope of these reforms. It also establishes a process so that these lists can be amended over time, such as when a new system is created or the identity of a responsible body changes.

Clause 143: Licence under Gas Act 1986 for performance of code management function

387 This clause grants the GEMA the power to license one or more code managers, each of which will be responsible for making arrangements for the governance of their respective code(s). These licences will be held under the same framework as other licences that the GEMA is able to grant under the Gas Act 1986. Any licences for dual-fuel codes will be granted simultaneously under both Acts.

388 This clause also establishes 'code management' as a prohibited activity, making it illegal to perform that activity without an appropriate licence. This clause, as compared to the equivalent drafting establishing the code management prohibition under the Electricity Act 1989, contains additional drafting to accommodate the licence framework that is

presently in place for gas shippers.

Clause 144: Licence under Electricity Act 1989 for performance of code management function

389 This clause grants the GEMA the power to license one or more code managers, each of which will be responsible for making arrangements for the governance of their respective code(s). These licences will be held under the same framework as other licences that the GEMA is able to grant under the Electricity Act 1989. Any licences for dual-fuel codes will be granted simultaneously under both Acts.

390 This clause also establishes 'code management' as a prohibited activity, making it illegal to perform that activity without an appropriate licence.

Clause 145: Selection of code manager

391 This clause sets out the two ways that the GEMA will be able to select code managers: on a non-competitive basis or on a competitive basis, via tender. It also empowers the Secretary of State to create regulations that will guide the GEMA's decision on which selection route to take in each case.

Clause 146: Selection on a non-competitive basis

392 This clause empowers the Secretary of State to draft regulations that set out the related processes, conditions or restrictions that the GEMA would apply when selecting code managers on a non-competitive basis. In practice, this would mean the GEMA directly appointing a code manager without the requirement for a competitive tender.

Clause 147: Selection on a competitive basis

393 This clause empowers the GEMA to draft regulations that set out the processes and conditions by which it would select code managers on a competitive basis.

Clause 148: Strategic direction statement

394 This clause places a duty on the GEMA to publish a document each year that describes how it thinks the codes will or may need to change to reflect policies and other developments in the energy sector. It also sets out the processes that must be followed before publishing this document. Once published, the strategic direction set out in this document will be used by individual code managers to develop their code changes delivery plans for the next year.

395 When writing this document, the GEMA will need to consider any advice provided by the Independent System Operator and Planner and any relevant developments in the energy sector. More detailed considerations may also be set out in regulations made by the Secretary of State.

Clause 149: Transfer of functions under section 148 to Independent System Operator and Planner

396 The Bill places a duty on the GEMA to publish a strategic direction statement each year. However, given its role the Independent System Operator and Planner (ISOP) may be better suited to take on this role in future. This clause sets out a process that would allow the Secretary of State to permanently transfer the GEMA's duty to publish a strategic direction to the ISOP.

Clause 150: Modification of designated documents by the GEMA

397 This clause grants the GEMA the power to change designated documents directly under a limited range of circumstances, without the need to submit changes for consideration via the code manager-led change process. These circumstances include where the change

is urgent; where the interests of the relevant code manager are likely to prejudice the change; where the change is for the purposes of implementing the strategic direction and is particularly complex; where the change is related to code consolidation; or where the change is required as a consequence of changes made by the GEMA to another document. It also empowers the Secretary of State to draft regulations that set out further detail regarding how and when this power can be used.

Clause 151: Modification under section 150

398 This clause describes the processes that the GEMA must follow when using its power to directly modify designated documents, such as who must be consulted or informed. This clause also establishes a veto power for the Secretary of State, which will allow them to direct the GEMA not to make a proposed modification to a designated document.

Clause 152: Directions relating to designated central systems

399 This clause gives the GEMA the power to issue directions to the bodies that are responsible for operating, or procuring the operation of, the critical IT systems that underpin the energy system. This power is primarily intended to allow the GEMA to ensure that these bodies do what they are required to do by the codes. In addition, it will also allow the GEMA to issue directions that are reasonably necessary for the efficient operation of the code, such as a direction to help a code manager develop a specific code change proposal.

Clause 153: Directions under section 152

400 This clause details the process and considerations that the GEMA must follow when it wants to give a direction to the responsible body for a central system, including who must be consulted or informed.

Clause 154: Principal objective and general duties of Secretary of State and GEMA under Part 5

401 This clause states that the new powers and functions being conferred on the Secretary of State and the GEMA by this Part will be subject to the relevant principal objectives and general duties listed in the Gas Act 1986 and the Electricity Act 1989. These obligations of the Secretary of State and the GEMA include a requirement to carry out their respective functions in a way that protects the interests of existing and future consumers.

Clause 155: GEMA's annual report to cover matters relating to designated documents

402 The GEMA is already required to publish an annual report each year. This clause updates the GEMA's existing reporting requirements so that it also needs to include a general overview of developments related to codes, as well as an overview of code-related decisions that it has made over the past year.

Clause 156: Regulations under Part 5

403 This clause explains the legal procedures that will be used when creating the regulations mentioned elsewhere in this Part and when seeking approval for these regulations from Parliament. In all but one case these regulations will be subject to the negative procedure, whereby there is no automatic parliamentary debate on them. Regulations related to the transfer of the GEMA's duty to publish a strategic direction statement to the ISOP will be subject to the more active form of parliamentary scrutiny through the affirmative procedure. Since the transfer will be a permanent one and would represent a significant change within the energy system, Parliament will be required to actively scrutinise and debate exercise of the power.

Clause 157: Interpretation of Part 5

404 This provision is self-explanatory.

Clause 158: Transitional provision and pension arrangements

405 This provision is self-explanatory.

Clause 159: Minor and consequential amendments

406 This provision is self-explanatory.

Part 6: Market Reform and Consumer Protection

Clause 160: Competitive tenders for electricity projects

407 This provision is self-explanatory.

Clause 161: Mergers of energy network enterprises

408 This clause is self-explanatory.

Clause 162: Licence required for operation of multi-purpose interconnector

409 Participating in the operation of a multi-purpose interconnector cannot easily be licensed at present as it is not currently addressed in the Electricity Act 1989. This clause amends the Electricity Act 1989 to ensure that a person who operates a multi-purpose interconnector will be required to hold a licence or an exemption. A definition of 'multi-purpose interconnector' is introduced into section 4 of the Electricity Act 1989 (by way of a new subsection (3EA), alongside a description of what it means to participate in the operation of a multi-purpose interconnector (by way of a new subsection (3CA). The amendments also, as a consequence of amending section 4(1) of the Electricity Act 1989, make unauthorised participation in the operation of a multi-purpose interconnector a prohibited activity. The wording of new subsection (3CA) of section 4 ensures that persons already holding an interconnector or offshore transmission licence are not caught by that prohibition. In addition, the new definition of a multi-purpose interconnector covers the range of technologies involved in their operation. For example, new subsection (3EA)(b)(ii) describes conveyance "between a generating station and a substation" which also captures an MPI which includes multiple generating stations and/or substations (including demand stations).

410 By way of a new sub-section (2AA) of section 6 of the Electricity Act 1989, the holder of an MPI licence may not also be a holder of a licence falling within paragraphs (a) to (e) of section 6(1) of the Electricity Act 1989. This ensures a level of separation between licence holders that will enable the Gas and Electricity Markets Authority (GEMA) to properly regulate licensed activities.

411 The exact operational requirements and level of business separation required between holders of MPI licences and holders of different licence types will be determined by GEMA.

412 The intention of this clause is not to create a stricter separation between licence holders than is necessary for regulatory purposes. In particular, the intention is not to impose strict business separation between MPI licence holders and interconnector licence holders as applicable between the National Grid Electricity Transmission and the Electricity System Operator

Clause 163: Standard conditions for MPI licences

413 This clause sets out the procedures for determining the standard licence conditions for multi-purpose interconnectors. The procedures are in line with those for existing

licences. After the commencement of subsection (6), the Secretary of State will have no further role in relation to the standard licence conditions although he or she may veto proposals made by GEMA to modify the standard licence conditions either on the grant of a licence or subsequently.

Clause 164: Operation of multi-purpose interconnectors: independence

414 This clause amends the Electricity Act 1989 to ensure that any person who participates in the operation of a multi-purpose interconnector is certified by Ofgem to be independent in relation to generation and supply activities, in order to be able to hold an MPI licence.

Clause 165: Grant of MPI licences to existing operators

415 This clause gives the Secretary of State the power under section 6 of the Electricity Act 1989 to issue a multi-purpose interconnector licence to a person operating under an electricity interconnector or offshore transmission licence when the prohibition enters into force.

Clause 166: Power to make consequential etc provision

416 This clause confers a regulation making power on the Secretary of State to make further consequential amendments which may arise because of the clauses which relate to multi-purpose interconnectors. Regulations that make consequential provision may amend, repeal, or revoke an enactment.

Clause 167: Consequential amendments relating to multi-purpose interconnectors

417 This clause is self-explanatory.

Clause 168: Electricity Storage

418 This clause amends the Electricity Act 1989 to clarify that electricity storage is a distinct subset of generation and defines the storage as energy that was converted from electricity and is stored for the purpose of its future reconversion into electricity.

419 A non-exhaustive list of technologies that are considered electricity storage includes electro-chemical batteries; gravity energy storage systems; air-based storage systems; kinetic energy storage systems; thermal storage where the stored chemical energy is then converted back into electricity.

420 The definition does not include the following:

a. Systems which convert electricity to another energy vector and back to electricity, where the other energy vector is not stored within a closed system. For example, power to gas to power systems which do not reconvert into electricity the same energy as was converted from it. This is because it is not the same energy being reconverted to electricity.
b. Systems which store energy that has been converted from electricity, but that energy is not then reconverted back to electricity. For example, thermal systems where the stored energy is used directly as heat. This technology lacks the key final stage of reconversion to electricity, meaning that it does not act as a temporary store with respect to the electricity system.
c. Industrial processes powered by electricity whereby the reconversion of potential energy into electricity is a by-product of another process. This is because such processes are not used to perform storage on the electricity system as the term is properly understood.

d. Network equipment whose primary function is not energy storage on the power electricity system. For example, capacitors and supercapacitors (where used as circuit impedance components), transformers and inductors are licensable as equipment or apparatus that are used for, or for purposes connected with, the transmission or distribution of electricity, rather than its generation. This is because they are not used to perform storage on the electricity system as the term is properly understood.

Clause 169: Payment as alternative to complying with certain energy company obligations

421 This clause grants the Secretary of State the power to introduce a buy-out mechanism under the Energy Company Obligation (ECO) scheme.

422 This allows the Secretary of State powers to include provisions in the secondary legislation for the ECO scheme that gives suppliers the option to meet their obligations by making a payment to an approved third party, for an approved purpose.

423 The clause also provides powers that enable the Secretary of State to make provisions on the amount of payment and the determination of the approved third parties and approved purposes.

Clause 170: Smart meters: extension of time for exercise of powers

424 Subsection (1) amends section 88(5) of the Energy Act 2008 to extend until 1 November 2028 the period within which the Secretary of State can exercise the power under section 88(1). Section 88(1) provides for the Secretary of State to modify conditions of licences, and documents maintained in accordance with licence conditions (and agreements giving effect to such documents), for example industry codes.

425 Subsections (2)(a) and (3)(a) amend section 8AA(10D) of the Gas Act 1986 and section 7A(10D) of the Electricity Act 1989 to extend to 1 November 2028 the expiry date for the provisions allowing for the Secretary of State to veto a proposed transfer of the smart meter communication licences.

426 Subsections (2)(b) and (3)(b) amend section 41HB(2) of the Gas Act 1986 and section 56FB(2) of the Electricity Act 1989 to extend until 1 November 2028 the period within which the Secretary of State can exercise the power to provide for activities connected with smart meters to be licensable activities. Licensable activities are those determined in legislation to be prohibited to undertake without being the holder of a licence or without an exemption from the requirement to hold a licence.

427 Subsection (4) makes consequential repeals.

Part 7: Heat Networks

Chapter 1: Regulation of Heat Networks

Clause 171: Relevant heat network

428 This clause clarifies the scope of regulation by defining "relevant heat network", a term used for the purpose of the powers to make secondary legislation detailed in Schedule 16. The definition of "relevant heat network" relies on definitions of "communal heat network", "district heat network", and "heat network" in subsection (2) (and subsection (3) clarifies that ambient loops, that do not have a single heat source, are within the definition of "district heat networks"). Subsection (4) permits the Secretary of State to amend these definitions by regulations subject to the affirmative procedure.

Clause 172: The Regulator

429 This clause provides that GEMA will be the regulator for heat networks in England, Wales and Scotland. The Secretary of State may introduce regulations to appoint a different regulator by affirmative procedure. The regulator in Northern Ireland will be the Northern Ireland Authority for Utility Regulation (NIAUR) subject to a similar power to make changes by secondary legislation.

Clause 173: Alternative dispute resolution for consumer disputes

430 This clause provides for consequential amendments to the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015. Specifically, it provides the Department for the Economy in Northern Ireland with powers to designate its heat networks regulator as a competent authority with responsibility for approving Alternative Dispute Resolution bodies in Northern Ireland (GEMA is already designated as a competent authority for this purpose).

Clause 174: Heat networks regulation

431 This clause provides powers for the Secretary of State to make secondary legislation to regulate heat networks in Great Britain and confer powers relating to the development and maintenance of heat networks in Great Britain. It also provides the Department for the Economy in Northern Ireland with powers to make secondary legislation to regulate heat networks in Northern Ireland and confers powers relating to the development and maintenance of heat networks in Northern Ireland. Further details on what these regulations may provide for are set out in Schedule 16. The clause requires the Secretary of State and the Department for the Economy in Northern Ireland to consult with relevant parties before making regulations. The clause commits the Secretary of State to consult with Scottish Ministers before making regulations on consumer protection that are within the devolved competence of Scottish Ministers.

Clause 175: Heat networks regulation: procedure

432 This clause sets out the procedure for making regulations described in the previous clause. They are to be made by statutory instrument and the clause specifies whether they are to be made by negative or affirmative procedure. For example, a statutory instrument is subject to the affirmative procedure if it is the first of the regulations to be made under this power or if it amends primary legislation.

Clause 176: Recovery of costs by GEMA and NIAUR

433 This clause allows for fees paid by electricity and gas licensees to contribute towards costs relating to heat networks. This includes costs incurred by:

- GEMA, or NIAUR in the case of Northern Ireland, in their roles as heat network regulators;
- other parties carrying out functions of the regulator;
- the Secretary of State, or the Department for the Economy in Northern Ireland, in relation to the special administration regime;
- parties providing consumer advocacy and advice.

Clause 177: Heat networks: licensing authority in Scotland

434 This clause provides that the Secretary of State may by regulations appoint GEMA as the licensing authority under the Heat Networks (Scotland) Act 2021. It sets out amendments to that Act which will allow for the appointment to be made through regulations.

Clause 178: Heat networks: enforcement in Scotland

435 This clause provides that the Secretary of State may (by regulations) give the licensing authority described in clause 173 above the same enforcement powers as those being provided to the heat networks regulator through regulations.

Clause 179: Interpretation of Chapter 1

436 This clause defines certain terms used in these clauses.

Chapter 2: Heat Network Zones

Clause 180: Regulations about heat network zones

437 This clause provides powers for the Secretary of State to make regulations about heat network zones ("zones regulations") and describes what a heat network zone is. The clause also describes the scope of the regulations and the Parliamentary procedure to be followed.

Clause 181: Heat Networks Zones Authority

438 This clause provides that zones regulations may make provision for an "Authority" to be established, with responsibility for general functions in relation to heat network zones. The clause allows for the Secretary of State, or another person, to be designated as the Authority. The Authority may also delegate its functions to other persons specified in the regulations.

Clause 182: Zone coordinators

439 This clause provides that zone regulations may make provision about zone coordinators, including regarding their governance and funding. The regulations may specify how zone coordinators can be established by local authorities acting alone or collaboratively. The clause also provides powers for regulations to be made which permit the Authority to perform the functions of a zone coordinator or to direct a zone coordinator to perform any of its functions. The Authority may also require local authorities to designate a zone coordinator or designate a zone coordinator where a local authority fails to do so.

440 This clause defines what "local authority" means for the purposes of this clause.

Clause 183: Identification, designation and review of zones

441 This clause provides that zones regulations may make provision for the Authority and zone coordinators to identify zones, in accordance with the zoning methodology, and for zone coordinators or the Authority to designate such zones. Regulations may also make provision for zone coordinators or the Authority to undertake reviews of designation decisions.

442 In particular, the clause provides that zones regulations may make provision regarding the procedure for the designation of areas as zones by zone coordinators or the Authority.

443 The clause also provides powers for regulations enabling zone coordinators or the Authority to revoke, vary and review designations subject to criteria and conditions.

Clause 184: Zoning methodology

444 This clause provides that zones regulations may make provision for a methodology which the Authority and zone coordinators must follow when identifying areas as heat network zones.

445 Zones regulations may also make provision for the Authority to issue guidance relating to the methodology, as well as for the Secretary of State to carry out reviews of the

methodology.

Clause 185: Requests for information in connection with section 183 or 184

446 This clause provides that zones regulations may make provision for the Authority and zone coordinators to request information in connection with their functions under clauses 183 (Identification, designation and review of zones) and 184 (Zoning methodology).

447 The regulations may provide powers for the Authority and zone coordinator to issue notices and impose penalties for non-compliance with requests, as well as making provision to ensure that information requests do not require the breach of data protection legislation or obligations of confidence.

448 This clause also makes provision for zones regulations to provide that zone coordinators may delegate their information requests powers to others, with the regulations to specify the circumstances in which this may be done and any conditions which apply.

Clause 186: Heat networks within zones

449 This clause makes provision for certain types of buildings and heat sources within heat network zones to be required to connect to district heat networks in circumstances and within timeframes to be set out in regulations. The clause also provides for regulations to make provision for zone coordinators to provide prior notice of requirements.

450 In relation to buildings which are required to connect, the regulations may provide for exemptions to be granted subject to specified criteria and provide a route for challenging decisions where an exemption request is refused.

451 In relation to heat sources, the zones regulations may provide that zone coordinators may request information from heat sources and the relevant procedures that are to apply. Regulations may also make provision about the terms on which heat is to be supplied to a heat network, including about the amount that may be charged.

452 The clause also provides that regulations may allow zone coordinators to set emissions limits on heat networks in zones, subject to the consent of the Authority. A grace period may be applied before this requirement takes effect and regulations may specify when this should apply, including the procedure and notice period to be followed, and route for legal challenge when a grace period is refused. The Authority may also issue guidance in relation to grace periods.

453 The clause also sets out the definition of "emissions" and "targeted greenhouse gas", in the context of the emissions limit provision.

Clause 187: Delivery of district heat networks within zones

454 This clause provides that zones regulations may make provision for the delivery of district heat networks by zone coordinators within zones, including for the Authority to give advice to zone coordinators.

455 In particular, the regulations may make provision for the grant of consent from zone coordinators to be required for the development of district heat networks within zones and provide powers for zone coordinators to grant exclusive rights within a zone. Regulations may make provision for the Authority to publish the standard conditions that zone coordinators must use when granting an exclusive right. The clause also provides that zones regulations may provide that, after a certain timeframe, a zone coordinator may lose the power to decide the delivery model for heat networks within a zone.

456 The clause also provides for zones regulations to make provision for a zone coordinator to vary or revoke a decision made regarding the delivery of district heat networks in zones and provides for an appeal process.

Clause 188: Enforcement of heat network zone requirements

457 This clause provides that zones regulations may make provision regarding the enforcement of heat network zone requirements, such as the requirement to connect to a district heat network or the requirement to provide information to a zone coordinator.

458 These regulations may provide for zone coordinators to issue notices requiring demonstrations of compliance within a certain period and impose certain penalties for non-compliance. Provision may also be made for the appeal of notices.

Clause 189: Penalties

459 This clause clarifies what may be included in regulations relating to penalties issued under clause 185(2)(c), relating to requests for information, and clause 188(2)(c), relating to enforcement powers. This includes provisions around the maximum penalty, procedure, grounds for legal challenge, how penalties may be recovered and that sums received may be paid into the Consolidated Fund.

460 This clause also allows the Authority to issue guidance in respect of the penalty-making powers described above, including in relation to how the amount of a penalty may be determined.

Clause 190: Records, information and reporting

461 This clause provides that zones regulations may require zone coordinators to collect information which enables the identification of areas as heat network zones or supports monitoring of areas which have been designated as heat network zones. Regulations may also require zone coordinators and the Authority to maintain records of relevant information they receive including that which is by virtue of their powers to request information to fulfil their functions (clause 185).

462 This clause also provides that regulations may include provisions that enable or require:

- zone coordinators to provide information to other zone coordinators, the Authority or the Regulator; and
- the Authority to provide information to zone coordinators or the Regulator.

463 In each case, the clause also provides that zones regulations may make provision to ensure that the sharing of information does not constitute breaches of data protection legislation or obligations of confidence.

Clause 191: Interpretation

464 This clause sets out how various terms within this Chapter are to be interpreted.

Part 8: Energy Smart Appliances and Load Control

Chapter 1: Introductory

Clause 192: Energy smart appliances and load control

465 This clause contains the definitions for Part 8, which is concerned with Energy Smart Appliances (ESAs) and load control. It defines an "energy smart appliance" and the related concept of "energy smart function." The clause also defines "load control signal."

Chapter 2: Energy Smart Appliances

Clause 193: Energy smart regulations

466 This clause provides the Secretary of State with the power to introduce "energy smart regulations," for ESAs in Great Britain, and to mandate they must comply with certain requirements.

467 The clause provides that energy smart regulations can be made for electric vehicle charge points or energy smart appliances that are used in connection with specific purposes, namely:

- Refrigeration, e.g., fridges and freezers
- Cleaning, e.g., washing machines, dishwashers and tumble driers
- Battery storage e.g., home batteries
- Electrical heating or ventilation, e.g., air and ground source heat pumps and electric storage heaters
- Air conditioning or ventilation.

468 Technical requirements can be imposed on these appliances, including but not limited to ensuring that they do not undermine the stability of the electricity system, can respond to energy smart related signals from any load controller (defined in Chapter 3 below), and that communications and personal data used by energy smart appliances are secure.

469 The clause provides for the prohibition of the placing on the market of appliances which do not meet the requirements and provides for enforcement activities to be undertaken.

470 This clause also provides the Secretary of State with the power, through regulations, to define 'relevant electronic communications network', and to amend the list of specified purposes applicable to the energy smart regulations.

471 The clause sets out the economic actors to which the requirements will apply. Relevant economic actors include any person making, selling, importing or distributing energy smart appliances, or carrying out load control.

Clause 194: Prohibitions and requirements: supplemental

472 This clause sets out that the requirements imposed by the energy smart regulations enabled by clause 193 may refer to technical standards and published documents, or a list published by the Secretary of State.

473 This clause specifies that the power conferred to the Secretary of State in clause 189 to prohibit relevant appliances being placed on the market is restricted to non-compliant ESAs and non-smart electric heating appliances (for example, heat pumps) and electric vehicle charge points, so that the sale of these devices without smart functionality can be prohibited in Great Britain.

474 The clause specifies that enforcement action of any kind will not be taken against the end user of an ESA.

Clause 195: Enforcement

475 This clause sets out that the energy smart regulations include provision to ensure compliance with the requirements under the regulations, including provision to designate enforcement authorities, require that relevant economic actors maintain

information and monitor compliance, and a range of investigatory powers to monitor and assess non-compliance, and stop or limit the placing on the market of appliances where non-compliance has occurred. They also allow an enforcement authority to apply to a court in connection with non-compliance, and for the court to provide a remedy. The provide for the Secretary of State to make payments, or provide resources, to the enforcement authority for the purpose of enforcing the energy smart regulations.

Clause 196: Sanctions, offences and recovery of costs

476 This clause specifies that regulations can impose a range of sanctions, including the imposition of civil penalties on economic actors for non-compliance with energy smart regulations or for providing false information. Energy smart regulations can create certain offences in relation to specific activities, such as contravening requirements, and obstructing, misleading or impersonating enforcement authorities. Offences may not be publishable with imprisonment.

477 The clause also allows for the enforcement body to recover costs in relation to the energy smart regulations.

Clause 197: Appeals against enforcement action

478 This clause provides that where an enforcement authority has imposed a requirement or civil penalty, this must include for a right of appeal to a court or tribunal. The right of appeal to a court of tribunal against a penalty can include, but is not limited to, provisions set out in subsection (2). Subsection (4) outlines the powers conferred on the court or tribunal to confirm, withdraw or vary the requirement or penalty.

Clause 198: Regulations: procedure and supplemental

479 This clause allows for different provisions to be made for different appliances or purposes and the ability to make exemptions under these powers.

480 This clause sets out the requirement for the Secretary of State to consult before making regulations that subject an ESA to regulations or amending the list of relevant purposes in clause 193.

481 The clause sets out that the first energy smart regulations made under these powers, any amendment to the list of purposes set out in clause 194 for which the energy smart regulations apply, or the creation of a criminal offence would be subject to the affirmative procedure. The made affirmative procedure would also be used where energy smart regulations introduce significant changes such as bringing other appliances into scope, introducing a requirement to comply with a new standard or introducing enforcement mechanisms or penalties. Any other statutory instrument regarding the energy smart regulations is subject to the negative procedure.

Chapter 3: Licensing of Load Control

Clause 199: Power to amend licence conditions etc: load control

482 This clause allows the Secretary of State to amend existing special and standard licence conditions granted under Section 6(1) of the Electricity Act 1989 and 7A(1) and 7AB of the Gas Act 1986. It also allows the modification of electricity codes (i.e. a document maintained under electricity licences). It may be used to facilitate, promote or regulate remote load control of energy smart appliances, including by ensuring their security, where load control means communicating with devices to alter their electricity consumption or export. For example, modifying licences in the event a load control organisation is also a supplier to clarify the interaction between the two licences.

483 A non-prescriptive list of specific ways in which this power may be used is given. It specifies, for instance, that the provision of load control services may be prohibited in respect of certain devices (for instance those which do not meet relevant technical specifications) or may be regulated by reference to those devices (for instance by imposing requirements for the control or configuration of devices to which load control services apply).

484 This modification power can be exercised to make different provisions in relation to different classes of customer (for example domestic, small business or medium/larger businesses). The Secretary of State may also make any necessary and relevant incidental, supplementary, consequential or transitional modifications to licence conditions or documents.

485 This clause states that the power to modify licence conditions cannot be exercised after a period of 10 years (beginning when the power comes into force). It also allows for the Secretary of State to extend this period by up to three years at a time, subject to the affirmative procedure.

Clause 200: Power to amend licence conditions etc: procedure

486 This clause provides that the Secretary of State must consult the holders of licences, the Gas and Electricity Markets Authority and others as appropriate, before making modifications. It also sets out the notification process which must be undertaken by the Secretary of State after making any modification.

Clause 201: Load control: supplemental

487 Standard licence conditions are licence conditions that are typically incorporated into the licences of all (or a subset of) licence holders for the relevant activity - in this case load control. Any modifications made to a standard licence condition in a particular licence using these powers, does not prevent the remainder of that licence condition in that particular licence from continuing to be a standard condition (for example, for the purposes of future modification).

Clause 202: Application of general duties to functions relating to load control

488 This clause provides that, when exercising any of the powers under this Act to amend licenses granted under the Electricity Act 1989 and Gas Act 1986, the Secretary of State is bound by the principal objective (essentially to protect the interests of electricity consumers) and general duties set out in Part 1 of each of those Acts. It also provides that modifications made to standard conditions of relevant existing licenses are reflected in the sections of the Utilities Act 2000 which govern the standard conditions of those licenses.

Clause 203: Licensing of activities relating to load control

489 This clause introduces Schedule 17, which contains amendments necessary to the Electricity Act 1989 to license activities relating to load control.

Part 9: Energy Performance of Premises

Clause 204: National Warmer Homes and Businesses Action Plan

490 This clause imposes a duty on the Secretary of State to publish a plan within 6 months of the Act being passed setting out how the Government intends to deliver on achieving decarbonisation in homes and businesses – specifically to support low carbon heat, energy efficient domestic and non-domestic properties and higher standards for new builds. The Secretary of State must, in developing the Warmer Homes and Businesses

Action Plan, consult the Climate Change Committee and its sub-committee on adaptation.

Clause 205: Power to make energy performance regulations

491 This clause gives the Secretary of State the power to make regulations (energy performance regulations) to enable or require the energy usage or the energy efficiency of premises to be assessed, certified, and published and to require that improvements in energy usage or efficiency are identified and recommended.

492 The clause also gives the Secretary of State the power to make regulations to restrict or prohibit the marketing or disposal of premises where their energy performance has not been assessed, certified, or publicised. Under this clause, the Secretary of State may by regulations confer functions on any person and impose requirements or make provision for securing compliance with requirements under the regulations.

493 Regulations made under this clause may also authorise, restrict or prohibit the supply or keeping of information relating to the energy performance of buildings.

494 This clause, and the two which follow, will enable the Secretary of State to amend, revoke or replace the existing energy performance of premises regime, which derives from EU law.

Clause 206: Energy performance regulations relating to new premises

495 This clause provides that the Secretary of State may make energy performance regulations in relation to new premises.

Clause 207: Sanctions

496 This clause provides that the Secretary of State may by regulations make provision with respect to the enforcement of energy performance regulations, including the imposition of civil penalties up to a specified maximum amount and for the creation of criminal offences and associated penalties (subject to the limitation set out in the clause). Regulations made under this clause must provide for a right of appeal against the imposition of a penalty.

Clause 208: Regulations under Part 9

497 This Clause relates to devolution, the application to Crown and Parliament and the Territorial extent relevant clauses.

Part 10: Energy Savings Opportunity Schemes

Clause 209: Energy savings opportunity schemes

498 The purpose of this clause is to set out powers for the establishment and operation of one or more Energy Savings Opportunity Schemes (ESOS).

499 Subsections (2) and (3) set out that an ESOS scheme imposes requirements on undertakings as defined under the Companies Act 2006, for the purposes of enabling or requiring actions relating to assessing undertakings' energy consumption or resulting greenhouse gas emissions, and enabling, encouraging or requiring actions relating to identifying and achieving energy savings or emissions reductions. The purposes also include assessment of costs and benefits of possible energy savings or emissions reductions and setting out plans or targets for achieving them.

500 Subsections (4) and (5) explain the meaning of the terms 'energy saving' and 'emissions reduction' for the purpose of interpreting Part 10.

501 Subsection (6) enables regulations to make provisions determining the energy consumption and resulting greenhouse gas emissions for which an undertaking is responsible.

502 Under provisions in subsection (7), regulations may impose requirements on persons, give them functions or enable them to exercise judgments on matters.

503 Subsection (9) sets out that the existing ESOS scheme regulations can be treated as having been made under these new powers and explains that the term 'compliance body' in the existing regulations is covered by a reference to 'scheme administrator' in Part 10. A scheme administrator, as set out by clause 215, is a public authority which may be appointed by regulations to carry out functions relating to administration, compliance monitoring and enforcement of an ESOS scheme's requirements.

Clause 210: Application of energy savings opportunity schemes

504 The clause enables regulations to set out the application of an ESOS scheme, including in terms of which undertakings it applies to, and what the territorial application of such a scheme may be. This clause also enables regulations to make provision for situations where responsibility for energy consumption under such a scheme may need to be determined.

505 Subsection (2) enables regulations to set out how multiple participants (defined by clause 221) may be treated as a single participant and require obligations on one participant to be treated as if imposed on another. This would allow the existing arrangements for corporate groups under the current regulations to be maintained.

506 Subsections (3) and (4) set out that powers under Part 10 relate to energy wholly consumed in the UK or an offshore area, or to energy partly consumed in those areas (for example in the case of energy used by transport which begins in the United Kingdom and ends outside the United Kingdom) but that regulations may also set out particular circumstances under which energy consumed outside the UK and offshore areas may also be covered by the regulations.

507 Subsection (5) stipulates that the provisions in Part 10 apply to all greenhouse gas emissions resulting from energy consumption to which Part 10 applies, whether they occur in the UK, an offshore area, or elsewhere.

508 Subsection (6) allows for regulations to set out how energy consumption is to be attributed to participants, including in certain specific situations such as where energy is consumed by someone that a participant has control or influence over.

509 Subsection (7) sets out the meaning of 'offshore area' for the purposes of subsections (3) – (5).

Clause 211: Requirement for assessment of energy consumption

510 This clause allows ESOS regulations to set out the requirements for an assessment of energy consumption and the greenhouse gas emissions resulting from it under an ESOS scheme. This may include, for example, the:

- frequency and periods of assessment;
- manner in which assessments are carried out; and
- record-keeping in relation to an assessment.

511 Subsection (3) enables regulations to provide that the whole or part of an assessment must be carried out, approved or audited by a specified person called 'an assessor'.

512 Subsections (4), (5) and (6) allow regulations to include provisions to enable or require that ESOS assessments include recommendations relating to energy savings or emissions reductions, and to require a cost-benefit analysis to be carried out first. Subsection (6) sets out details in relation to the meaning of 'cost-benefit analysis' for these purposes.

513 Subsections (7) and (8) enable regulations to make provisions relating to formal written reports and the sharing of them within the corporate group, and notification of the scheme administrator of compliance with the regulations, as well as the publication of this compliance information.

514 Subsection (9) allows regulations to make provision enabling alternative routes for complying with the ESOS regulations.

Clause 212: Assessors

515 This clause enables regulations to set out functions and powers relating to assessors (see clause 211) and also to bodies responsible for maintaining list or register of individuals who may be appointed as ESOS assessors.

516 Subsections (2) and (3) enable regulations relating to the appointment of assessors, including powers to require that they must be of a specified description which may refer to any criteria, for example competence, or membership of a designated list, body or scheme.

517 Designation for these purposes must be either by the Secretary of State or scheme administrator (subsection (4)) and subsection (6) enables regulations relevant to this, including provisions relating to powers to give, review and remove those designations and to publish a list of them.

518 Subsections (7) and (8) enable regulations to provide for a designated body, scheme administrator or the Secretary of State to maintain lists or registers of persons who may, or who may not, be appointed as assessors (for example assessors who have been removed from a designated register for poor practice).

519 ESOS regulations under subsection (9) may authorise a scheme administrator to share specified information with designated bodies, for the purpose of ensuring that assessors still meet relevant criteria or to ensure the quality of ESOS assessments.

520 ESOS regulations under subsection (10) may enable the Secretary of State or a scheme administrator to give directions about a list or register to a person responsible for maintaining that list or register, and to require compliance with those directions.

Clause 213: ESOS action plans

521 This clause sets out that regulations may require ESOS participants to produce an ESOS action plan, which is a written statement of proposed actions or targets intended to achieve reductions of energy use or greenhouse gas emissions. Regulations may require participants who have an action plan with no actions or targets to explain why.

522 Subsection (4) and (5) allows regulations to set out requirements for action plans,

including timings, form, content and publication requirements.

Clause 214 Action to achieve energy savings or emissions reductions

523 This clause enables ESOS regulations to require participants to take action to reduce energy use and greenhouse gas emissions. The clause sets out different ways in which regulations may set these requirements by reference to various objectives and means (subsection (1)).

524 The objective may be to take a course of action, for example to implement specific recommendations from the ESOS assessment, or it may be to make a specified energy or emissions reduction, for example to reduce emissions by a set percentage.

525 The means may be either a requirement to achieve that objective, or a requirement which encourages the participant to achieve the objective. An example of the latter would be a requirement to publish information on whether they have carried out specific recommendations or set a public target to reduce emissions by a set percentage.

526 Subsection (2) sets out the kind of actions that may be required of a participant for the purposes of subsection (1), for example, taking action in accordance with an ESOS action plan.

527 Under subsections (3) and (4), regulations may require participants to report on actions taken or energy or emissions reductions achieved, and may also require participants to provide an explanation when such requirements are not met.

528 Under subsection (5), regulations may set out requirements for the publication and verification of these reports.

529 Subsection (6) enables regulations to specify various matters in relation to the requirements on scheme participants, including that they may need to refer to a cost-benefit analysis, and may specify which participants are required to take action or in what circumstances.

Clause 215: Scheme Administration

530 The purpose of this clause is to allow regulations to set out the requirements for the administration, compliance monitoring and enforcement of an ESOS scheme's requirements. Subsections (1) and (2) enable regulations to appoint public authorities, referred to as 'scheme administrators', to carry out functions relating to these objectives. Subsection (3) enables regulations allowing a scheme administrator to authorise others to carry out some or all of its functions.

531 Under subsection (4), regulations may make provisions relating to a scheme administrator's functions, for example, setting out arrangements for cooperation and information sharing between multiple scheme administrators.

532 Under subsections (5) to (8), regulations may make provisions relating to scheme administration which include:

- Requiring participants to provide facilities to allow the scheme administrator to carry out its functions

- Allowing the scheme administrator to carry out functions relating to the publication of information about an ESOS scheme or participants
- Providing for guidance to be given on the scheme and specify who must have regard to it
- Requiring payment to be made by participants to cover fees or costs incurred by the scheme administrator.

533 Regulations under subsection (9) may give powers to the Secretary of State and appropriate public bodies throughout the UK to require a scheme administrator to provide them with information relating to ESOS which is relevant to the scheme or their functions, which, for example, could include monitoring the effectiveness of policies.

Clause 216: Enforcement, penalties and offences

534 This clause makes provision about the enforcement of ESOS, enables offences to be created and details the powers of the scheme administrator to impose penalties.

535 Subsection (1) enables ESOS regulations to authorise a scheme administrator to exercise various enforcement powers, including to obtain information and evidence, for example by entering premises with a warrant and seizing documents or records, and to issue notices requiring participants to demonstrate compliance with requirements or to remedy a failure to comply.

536 Subsections (2) to (4) enable regulations to provide that a person may be liable to penalties if they fail to comply with the regulations or provide false or misleading information, and that participants may be required to notify the scheme administrator that they have failed to comply or are likely to do so. The penalty for a failure to comply may include publication of specified information or a financial penalty.

537 Subsection (5) enables regulations to make further provisions relating to financial penalties.

538 Subsections (6) to (8) provide that regulations may also create offences and set out further details in relation to those offences, including procedural requirements and potential liability for individuals.

Clause 217: Appeals

539 This clause enables regulations to provide a right to appeal in relation to ESOS decisions and enforcement action and requires a right of appeal to be available for the imposition of a financial penalty.

540 Under subsection (2) and (3) regulations may set out who will hear and determine the appeal and provisions relating to making the appeal, for example the procedure and any fee payable.

Clause 218: ESOS regulations: procedure etc

541 This clause establishes procedural requirements for the making of ESOS regulations. Subsections (1) and (2) set out who must be consulted before making regulations, including in respect of regulations which contain provisions covering a matter which is

devolved to Scotland, Wales or Northern Ireland, and when that consultation must take place, which may be before the clause comes into force.

542 Subsection (3) sets out that ESOS regulations may amend or repeal other legislation, including primary legislation, in certain circumstances.

543 Subsection (4) allows regulations to create exceptions to requirements in regulations and subsection (5) allows regulations to provide for application to the Crown.

544 Subsections (6) and (7) set out when regulations would be subject to the affirmative parliamentary procedure and which would be subject to the negative procedure.

Clause 219: Directions to scheme administrators

545 This clause sets out that the Secretary of State may give directions to a scheme administrator, which they must comply with, and this includes a power for the Secretary of State to vary or revoke directions.

Clause 220: Financial assistance to scheme administrators and participants

546 This clause sets out that the Secretary of State may provide financial assistance in any form to scheme administrators and/or participants, which may be subject to conditions determined by, or in line with arrangements made by, the Secretary of State.

Clause 221: Interpretation of Part 10

547 This clause provides the meanings and definitions of various terms used in Part 10.

Part 11: Core Fuel Sector Resilience

Chapter 1: Introduction

Clause 222: General objective

548 This clause sets out that the functions of the Secretary of State under this part must be exercised with a view to ensuring that economic activity in the United Kingdom is not adversely affected by disruptions to core fuel sector activities and reducing the risk of emergencies affecting fuel supplies.

Clause 223: "Core fuel sector activity" and other key concepts

549 This clause sets out the key concepts used in this part of the Bill. "Core fuels" are defined in subsection (4) as either crude oil-based fuels or renewable transport fuels. "Core fuel sector activity", which includes storing of such fuels, amongst other activities, is defined in subsection (2), so far as the activity is carried out in the United Kingdom in the course of a business, and contributes, either directly or indirectly, to the supply of core fuels to consumers or businesses in the UK. Another key concept is that of an owner of a "Part 10 facility owner" meaning the owner of a pipeline, terminal or other facility or infrastructure which is used for the purpose of subsection (2) activities.

550 This clause also defines such concepts as continuity of supply of core fuels and core fuel sector resilience which relate to the purposes for which the measures in this part of the

Bill may be employed.

Chapter 2: Powers for Resilience Purposes

Clause 224: Directions to particular core fuel sector participants

551 This clause contains powers to give directions to a person who carries on core fuel sector activities in the course of a business which has capacity in excess of 500,000 tonnes or is a Part 10 facility owner whose owned facility has capacity in excess of 20,000 tonnes and require them to do anything in relation to their relevant activities or assets for the purposes set out in the clause.

552 Subsection (1) provides that the Secretary of State may give direction for the purpose of maintaining or improving core fuel sector resilience but may not do so unless the Secretary of State considers that the persons to whom the direction would apply have failed to make sufficient progress with steps the Secretary of State considers necessary for maintaining or improving core fuel sector resilience.

553 When there is a disruption to or failure of continuity of core fuel supplies, subsection (3) provides that the Secretary of State may give directions for the purpose of restoring continuity of supply of core fuels or counteracting the disruption or failure, or its potential impact.

554 If the Secretary of State considers that there is a significant risk of disruption to or failure of continuity of core fuel supplies, subsection (4) provides that the Secretary of State may give directions for the purpose of reducing the risk or reducing the potential adverse impact of the disruption or failure.

Clause 225: Procedure for giving directions

555 This clause outlines the process for giving directions under clause 209. This includes the requirement for the Secretary of State to give notice to the recipient of the proposed direction and consider any representations made by them. The Secretary of State must also consult with relevant bodies, including those in the devolved administrations insofar as a direction relates to relevant activities or assets in a devolved administration, before giving a direction and consider any representations made by them.

Clause 226: Offence of failure to comply with a direction

556 Subsection (1) sets out that any person who without reasonable excuse fails to comply with a direction given to them under clause 209 commits an offence and is liable on conviction to a fine or imprisonment (or both).

Clause 227: Corresponding powers to make regulations

557 This clause contains a power to make regulations which will apply to a class or description of persons who carry on core fuel sector activities in the course of a business which has capacity in excess of 1,000 tonnes or are Part 10 facility owners whose owned facility has capacity in excess of 1,000 tonnes and require them to do anything in relation to their relevant activities or assets for the purposes set out in the clause.

558 Subsection (1) provides that the Secretary of State may make regulations for the purpose of maintaining or improving core fuel sector resilience but may not do so unless the Secretary of State considers that the persons to whom the regulations would apply have failed to make sufficient progress with steps the Secretary of State considers necessary for maintaining or improving core fuel sector resilience.

559 When there is a disruption to or failure of continuity of core fuel supplies, subsection (3) provides that the Secretary of State may make regulations for the purpose of restoring

continuity of supply of core fuels or counteracting the disruption or failure, or its potential impact.

560 If the Secretary of State considers that there is a significant risk of disruption to or failure of continuity of core fuel supplies, subsection (4) provides that the Secretary of State may make regulations for the purpose of reducing the risk or reducing the potential adverse impact of the disruption or failure.

561 Subsection (7) sets out who the Secretary of Statement must consult with before making regulations under this clause. This includes that the Secretary of State must consult with bodies in the devolved administrations insofar as the regulations relate to relevant activities or assets in a devolved administration.

Clause 228: Power to require information

562 This clause enables the Secretary of State powers to give notice to a person carrying on core fuel sector activities in the course of a business which has capacity in excess of 1,000 tonnes or a Part 10 facility owner whose owned facility has capacity in excess of 1,000 tonnes, requiring them to provide information about their relevant activities or assets.

563 Subsection (2) enables the Secretary of State to give notice to a relevant wetstock manager requiring them to provide information about a person carrying on core fuel sector activities to whom the relevant wetstock manager provides stock management services. A relevant wetstock manager is defined in subsection (3).

564 Subsection (4) provides that the Secretary of State may only require information under this section for the purposes of maintaining or improving core fuel sector resilience.

565 Subsection (6) provides that the Secretary of State must notify the person in advance of the proposed notice to provide information and consider any representations made by that person.

Clause 229: Duty to report incidents

566 This clause places a duty on persons to notify the Secretary of State where they know or has reason to suspect that an incident affecting their activities or assets in such a way as to create a significant risk of, or cause, disruption or failure to the continuity of core fuel supply has occurred or is occurring. This duty applies to persons who are carrying on core fuel sector activities in the course of a business which has capacity in excess of 500,000 tonnes, is a Part 10 facility owner in whose case the owned facility has capacity in excess of 500,000 tonnes, or is a person of a class otherwise defined in regulations made under this section.

567 Subsection (4) also gives the Secretary of State power to seek further information from a person giving notice under this clause.

568 Subsection (5) provides that the Secretary of State to notify the person in advance of the proposed notice to provide information under Subsection (4) and consider any representations made by that person.

Clause 230: Contravention of requirement under sections 228 or 229

569 This clause creates offences associated with breach of clauses 228 or 229. A person who without reasonable excuse, fails to comply with a requirement imposed by a notice to provide information under clause 208(1) or (2) or fails to provide additional information about a notified incident under clause 229(4) commits an offence and is liable on conviction to a fine or imprisonment (or both) under subsection (3).

570 This clause also creates an offence associated with breach of clause 229(1). A person who

without reasonable excuse fails to report an incident under clause 229(1) commits an offence and is liable on conviction to a fine or imprisonment (or both) under subsection (3).

Clause 231: Provision of information at specified intervals

571 This clause provides that the Secretary of State may make regulations in respect of a person carrying on core fuel sector activities in the course of a business which has capacity in excess of 1,000 tonnes or a Part 10 facility owner whose owned facility has capacity in excess of 1,000 tonnes to provide information at prescribed intervals about their relevant activities or assets.

572 Subsection (2) provides that the Secretary of State may make regulations in respect of a relevant wetstock manager requiring them to provide information at intervals about a person carrying on core fuel sector activities to whom the relevant wetstock manager provides stock management services.

573 Subsection (3) states that this power may only be exercised for the purpose of maintaining or improving core fuel sector resilience.

Clause 232: Disclosure of information held by the Secretary of State

574 This clause sets out that information obtained under the power to require information (Clause 228), the duty to report incidents (Clause 229), or the requirement to provide information at specified intervals (Clause 231) may be disclosed to other government departments or devolved authority for the purposes of maintaining or improving core fuel sector resilience, restoring or counteracting any interruption to continuity of core fuel supply (or potential adverse impact), or if necessary for the purpose of criminal proceedings. There are restrictions on this power where disclosure would contravene data protection legislation or certain parts of the Investigatory Powers Act 2016.

Clause 233: Disclosure of information by HMRC

575 This clause gives Her Majesty's Revenue and Customs (HMRC) power to make disclosures to the Secretary of State for the purposes of facilitating the Secretary of State exercising functions relating to core fuel sector resilience. The clause provides limitations on such disclosures, including that the information must not be further disclosed without the consent of HMRC.

Clause 234: Appeal against notice or direction

576 This clause sets out that a person to whom a direction is given under clause 224, or who is given a notice to provide information under clause 228, or to provide further information about a notifiable incident under clause 229(4), may appeal a direction or notice to the First-tier Tribunal on the grounds which are set out in this clause.

Chapter 3: Enforcement

Clause 235: False statements etc

577 This clause specifies that a person who makes a statement they know to be false or misleading when responding to a notice to provide information (clause 228), a notice to provide further information about a notified incident (clause 229(4)), or in providing information at specified intervals under regulations (clause 231), commits an offence and is liable on conviction to a fine or imprisonment (or both).

Clause 236: Offences under regulations

578 This clause sets out the scope of offences that may be created under regulations in clause 227 (corresponding powers to make regulations) and clause 231 (provision of

information at specified intervals).

Clause 237: Proceedings for offences

579 This clause sets out the consents required to bring proceedings for an offence under this Part, including those contained in regulations made under clauses 227 or 231, if the prosecution is brought in England and Wales, or in Northern Ireland.

Clause 238: Liability of officers of entities

580 This clause sets outs that where an offence under this Part has been committed by a body corporate is proved to have been committed with the consent, connivance, or neglect of an officer of that body corporate, then the officer commits an offence as well as the body corporate. The clause also applies to partners of Scottish partnerships.

Clause 239: Enforcement undertakings

581 This clause provides that where the Secretary of State has reasonable grounds to suspect that a person has committed an offence which falls within subsection (5), the Secretary of State may choose to accept an enforcement undertaking. An enforcement undertaking is defined in subsection (3) as an undertaking to take action for any purposes specified in subsection (4) or to take action of a description set out in regulations made by the Secretary of State.

582 A person who has an enforcement undertaking accepted by the Secretary of State may not be convicted of the offence in relation to the relevant act or omission unless they do not comply with the enforcement undertaking (or any part of it) (subsection (2)). If a person gives an undertaking which is accepted by the Secretary of State and fails to fully comply with the undertaking but has complied with part of it, then the Secretary of State must take into account such partial compliance when deciding whether to take any criminal proceedings in respect of the offence (subsection (7)).

Clause 240: Guidance: criminal and civil sanctions

583 This clause requires the Secretary of State to issue guidance about sanctions and enforcement of offences under this Part (including in relation to criminal sanctions and enforcement undertakings) and outlines the procedure that the Secretary of State must follow before issuing or revising such guidance.

Clause 241: Guidance: parliamentary scrutiny

584 This clause sets out the parliamentary procedure the Secretary of State must follow before issuing guidance under Clause 240.

Chapter 4: General

Clause 242: Financial assistance for resilience and continuity purposes

585 This clause enables the Secretary of State to provide financial assistance for the purpose of maintaining or improving core fuels sector resilience or for the purpose of securing or maintaining continuity of supply of core fuels. Financial assistance under this clause may be given by way of the methods set out in subsection (3).

Clause 243: Power to amend thresholds

586 This clause enables the Secretary of State to make regulations to vary the specified threshold capacity values that apply in respect of those provisions listed in subsection (3).

Clause 244: Interpretation of Part 11

587 This clause sets out how various terms within this Part are to be interpreted.

Part 12: Offshore Wind Electricity Generation, Oil and Gas

Chapter 1: Offshore Wind Electricity Generation

Clause 245: Meaning of "relevant offshore wind project"

588 This clause sets out the definition of a "relevant offshore wind project". The definition includes the planning of generating stations or infrastructure.

Clause 246: Strategic compensation for adverse environmental effects.

589 If an offshore wind project has undertaken all feasible measures to avoid, reduce and mitigate an "adverse environmental effect" (as defined in subsection (4)) on protected sites, the appropriate authority may decide to consent development in the public interest (such as energy security and net zero targets). Compensatory measures must then be undertaken or secured.

590 This clause enables the public authority that is subject to environmental compensation obligations to determine that compensatory measures taken or secured at a strategic level (in relation to one or more relevant offshore wind projects) count towards discharging relevant environmental compensation obligations.

591 A definition of 'public authority' is included in clause 250. Clause 246 only applies where a public authority is subject to one or more environmental compensation obligations (a statutory duty or condition under 246(2)). The reference to "the public authority" in 246(3) is to whichever public authority is subject to the environmental compensation obligation in question. For example, the Scottish Ministers may be the public authority that is subject to an environmental compensation obligation in certain cases.

592 Subsection (3) sets out that the public authority may determine that measures taken or secured, or to be taken or secured, by it may count towards discharging its environmental compensation obligations. It enables the 'banking' of measures that have already been delivered so they can be allocated against future project(s) and enables measures that will be delivered in the future to be allocated against project(s). When considering whether the environmental obligations have been discharged, a public authority may rely on a combination of measures that have already been taken and measures to be delivered in the future. As per subsection (5), these measures may be taken either at the same site(s) as the project(s) or elsewhere in the marine environment.

593 Subsection (7) allows for one public authority to treat measures taken or secured (or to be taken or secured) by another public authority as measures taken or secured (or to be taken or secured) in the exercise of its own functions if it has the consent of the other public authority. For example, this could allow the Marine Management Organisation to treat compensatory measures that have already been taken or secured by the Department for Energy Security and Net Zero's Secretary of State as taken or secured by the Marine Management Organisation when determining a marine licence in relation to a relevant offshore wind project, provided the department's Secretary of State has given consent to do so.

594 Subsections (6) and (8) provide definitions for the interpretation of Clause 246, outlining the protected marine areas and relevant conservation objectives with reference to existing legislation.

Clause 247: Marine recovery fund

595 This clause confers powers to introduce one or more Marine Recovery Funds (MRFs),

which will support delivery of strategic compensatory measures. Commercial, competition and other project management information sensitivities can limit opportunities for offshore wind farm developers to easily deliver strategic compensatory measures in collaboration with other developers. A MRF is intended to be an optional route for developers or plan promotors to discharge compensation conditions imposed on them in respect of adverse effects on marine protected sites. This means that, where appropriate measures are available within a MRF, they will be able to make a payment to discharge the relevant condition.

596 Subsection (1) confers a power on the Secretary of State for the establishment, operation and management of one or more MRF, to be made by regulations. Subsection (2) sets out the purpose of a MRF to collect payments that will be made towards expenditure on strategic compensatory measures for the adverse environmental effects of one or more relevant offshore wind plans or projects. Subsection (3) makes clear that the following provisions do not limit the scope of the regulation making power in subsection (1).

597 Subsection (4) sets out provisions which may be made using the regulation making power in subsection (1) relating to a "compensation condition" (defined in subsection (5)), specifically how regulations may make provision to determine the extent to which a payment into a MRF discharges a relevant condition. A payment may discharge a compensation condition in whole or in part.

598 Subsection (6) and (7) set out further provisions which may be made using the regulation making power in subsection (1) to enable the funds paid into the MRF(s) to be spent on the various activities needed to deliver and maintain strategic compensatory measures for the required duration. Subsection (7) also makes provision for the delegation of functions to one or more authorities and third parties as appropriate.

599 Subsection (8) provides which functions may be delegated to the listed public authorities. Subsection (9) provides for the cancellation of a delegation of a function, and for the Secretary of State to retain the ability to exercise functions in parallel.

Clause 248: Assessment of environmental effects etc

600 This clause confers a power on the appropriate authority to make provision by regulations for the assessment of environmental effects of relevant offshore wind projects on protected sites; and make provision about the taking or securing of compensatory measures for adverse environmental effects on those sites. New regulations for the assessment of environmental effects will apply to relevant offshore wind projects only.

601 Subsection (2) clarifies that the appropriate authority is the Secretary of State or where relevant to regions in Scotland, Wales and Northern Ireland, the Scottish Ministers, Welsh Ministers and Department of Agriculture, Environment and Rural Affairs (DAERA) respectively. Subsection (3) sets out that Welsh Ministers are not the appropriate authority for nationally significant infrastructure projects.

602 Subsection (4) sets out the modifications that may be made to assessments required under Regulation 63 of The Conservation of Habitats and Species Regulations 2017, Regulation 28 of The Conservation of Offshore Marine Habitats and Species Regulations 2017, Regulation 48 of the Conservation (Natural Habitats &c.) Regulations 1994, and Regulation 43 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 ("the Conservation Regulations"). This includes the matters to be dealt with, who carries out the assessment, prohibiting the granting of consent, compensatory

measures, and which existing regulations may be disapplied or modified, including devolved legislation.

603 Subsection (5) refers to existing regulations which may be disapplied or modified, and subsection (6) clarifies the regulations that cannot be disapplied or modified. Both subsections include details of relevant regulations across the Devolved Administrations which may, or may not, be disapplied or modified. For example, regulation 29 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 which refers to a project being carried out for Imperative Reasons of Overriding Public Interest, cannot be modified or disapplied.

604 Subsections (7), (8), (9) and (10) set out provisions which may be made under Clause 248, including to enable the appropriate authority to give a direction; to require the appropriate authority or a specified person to give guidance; and to confer functions on any person.

Clause 249: Regulations under section 248: consultation and procedure

605 This clause sets out the consultation and procedural requirements that the Secretary of State, Scottish Ministers, Welsh Ministers, and DAERA must follow when making of new regulations under Clause 248.

606 Subsection (1) sets out the bodies whom the Secretary of State must consult, including the devolved administrations. Subsection (2) clarifies that new regulations are subject to the affirmative procedure.

607 Subsection (3) sets out the bodies whom Scottish Ministers must consult, including the devolved administrations and the Secretary of State. Subsection (4) clarifies that new regulations made by Scottish Ministers are subjective to the affirmative procedure.

608 Subsection (5) sets out the bodies whom the Welsh Ministers must consult, including the devolved administrations and the Secretary of State. Subsections (6) and (7) clarify the power to make regulations is exercisable by statutory instrument which must be laid before and approved by a resolution of the Senedd Cymru.

609 Subsection (8) sets out the bodies whom DAERA must consult, including the devolved administrations and Secretary of State. Subsections (9) and (10) clarify the power to make regulations is exercisable by statutory rule and must be laid before and approved by a resolution of the Northern Ireland Assembly.

Clause 250: Interpretation of Chapter 1

610 In addition to Clause 245, this clause sets out the definitions for terms used throughout this Chapter, including “adverse environmental effects”, “consent”, and “protected marine area”.

Chapter 2: Oil and Gas

Clause 251: Arrangements for responding to marine oil pollution

611 This clause allows the Secretary of State to make regulations related to oil pollution emergency planning, response, and inspection for offshore oil and gas operations, offshore CO_2 storage activities and offshore hydrogen production and storage works. Subsection (2) states, in more detail, what type of operation or infrastructure will be captured by the regulation making powers. Subsection (3) sets out that regulations may make provision about the implementation, maintenance, and review of an emergency plan. Subsection (4) specifies how the subsection (1) power may be used to cover the reporting of incidents. Subsection (5) provides inspection powers. Subsection (6) makes

further supplemental provision about the type of matters that may be covered by the regulation making power, which includes the following:

- New or amended definitions, to account for new activities (such as hydrogen production and storage);
- Delegation of functions;
- The charging of any fees associated with regulatory functions;
- The keeping of information; and
- The creation of criminal offences or civil penalties in relation to contraventions of the regulations.

612 This clause also sets out the maximum penalties associated with any criminal offence, as well as maximum civil penalties that could be issued.

Clause 252 Habitats: reducing effects of offshore oil and gas activities etc

613 This clause contains a power to make regulations for the purposes of, or connected with, habitats assessment of offshore activities relating to oil and gas, carbon dioxide storage and hydrogen production and storage. Subsections (2) and (3) enable regulations to be made preventing a specified type of activity from being carried out, or licence being granted, unless the Secretary of State has first considered the implications for relevant sites and granted a consent (which may be subject to conditions). Subsection (4) enables the Secretary of State to give directions. Subsection (5) provides that regulations cannot be made under subsections (2), (3) or (4), unless the Secretary of State considers they would contribute to the protection of relevant sites.

614 Subsection (7) explains that a "relevant site" may be defined in accordance with the regulations, but that definition must be framed by reference to natural habitats or habitats of species.

615 Subsection (7) contains further details about the provisions that can be made under the power in this section. For example, regulations may provide for:

- definitions;
- to confer functions;
- revocation or modification of consents;
- fees for associated regulatory functions; and
- enforcement.

616 This clause also sets out the maximum penalties associated with any criminal offence, as well as maximum civil penalties that could be issued.

Clause 253: Offshore oil and gas decommissioning: charging schemes

617 Subsection (1) of this clause inserts a new section 38C into the Petroleum Act 1998 ("PA 1998").

618 New section 38C of the PA 1998 contains powers to make regulations to charge for costs related to regulatory functions related to the decommissioning of offshore oil and gas infrastructure, under Part 4 of the PA 1998.

619 Section 30 Energy Act 2008 applies Part 4 PA 1998 (subject to modifications) to the decommissioning of carbon storage installations established for offshore activities requiring a licence under section 17 of the Energy Act 2008. Therefore, new section 38C PA 1998 will apply to the decommissioning of offshore carbon storage installations too.

620 Subsection (2) amends section 30 Energy Act 2008. provides that the negative resolution procedure will apply in the Scottish Parliament should Scottish Ministers exercise the new powers in section 38C of the Petroleum Act 1998 to make regulations to charge for their functions in connection with decommissioning of carbon storage installations.

621 The remaining subsections of this clause provide for consequential amendments to Part 4 PA 1998. In particular, the two fee charging provisions currently contained in section 29(5) and section 34(4) of that Act are omitted.

Clause 254: Model clauses of petroleum licences

622 This clause provides that model clauses, as set out in Schedule 19, will be amended in the Petroleum Licensing (Production) (Seaward Areas) Regulations 2008 and the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014 in order to introduce new ex-ante (before the event) powers for the Oil and Gas Authority (OGA) regarding the change of control of a Licensee in possession of any current and future Seaward Petroleum Production licences and all Landward Petroleum Production Licenses (but not Landward or Seaward Exploration Licences). This is to ensure that the governance, technical and financial capability of a Licensee in possession of a Petroleum Production licence is not undermined by an undesirable change of control. This is to replace the OGA's existing ex-post (after the event) powers to intervene after the change of control of a Licensee.

Clause 255: Power of OGA to require information about change in control of licensee

623 This clause grants powers to the OGA to request information which is reasonably required by the OGA in order to exercise its functions in relation to a change or potential change of control of a petroleum Licensee.

Part 13: Civil Nuclear Sector

Chapter 1: Civil Nuclear Sites

Clause 256: Application to the territorial sea of requirement for nuclear site licence

624 This clause amends section 1 and section 26 of the Nuclear Installations Act 1965 and section 68 of the Energy Act 2013 (EA 2013) to make it expressly clear that certain nuclear sites located wholly or partly in or under the sea (within the boundaries of the territorial sea adjacent to the UK) require a licence and are regulated by the Office for Nuclear Regulation.

Clause 257: Decommissioning of nuclear sites etc

625 This clause amends the Nuclear Installations Act 1965 in respect of nuclear third party liability and the processes for revoking and varying a nuclear site licence.

626 It confirms that "operation" of a nuclear installation includes "decommissioning" of that installation and therefore that a nuclear licence is required for decommissioning.

627 Different parts of a nuclear site pose different levels of risk. In recognition of this, the clause sets out various new routes to end the requirement for nuclear third party liability, based on the risk posed by the relevant part of the nuclear site.

628 The principal test, which will apply to nuclear reactors and most prescribed installations in the process of being decommissioned, is that the installation meets the criteria in the OECD Nuclear Energy Agency's 2014 "Decision And Recommendation Of The Steering Committee Concerning The Application Of The Paris Convention To Nuclear Installations In The Process Of Being Decommissioned", known as the "Decommissioning Exclusion".

629 The clause also amends procedures for varying a nuclear site licence including introducing a requirement for the appropriate national authority to consult with the relevant Health and Safety Executive before doing so.

630 This clause removes licensee's ability to unilaterally surrender their licence. Licensees will still be able to request that the appropriate national authority revoke or vary their licence.

Clause 258: Excluded disposal sites

631 Section 7B of the Nuclear Installations Act 1965 requires "relevant disposal sites" (disposal facilities for radioactive waste of nuclear origin) to have nuclear third party liability cover. This requirement currently ends when the condition described in section 7B 3(a) is met. This is known as the "no danger" condition.

632 This clause excludes certain low-risk sites from the nuclear third party liability regime, subject to their meeting conditions equivalent to the OECD Nuclear Energy Agency's 2016 "Decision and Recommendation Concerning the Application of the Paris Convention on Third Party Liability in the Field of Nuclear Energy to Nuclear Installations for the Disposal of Certain Types of Low-level Radioactive Waste". Secondary legislation made using powers in this clause may add conditions and/or specify documents that must be submitted as part of any application.

633 The clause also sets out the steps to be taken if an excluded disposal facility subsequently accepts unsuitable waste, i.e. waste that puts them in breach of the conditions in the clause.

Clause 259: Accession to Convention on Supplementary Compensation for Nuclear Damage

634 This clause introduces the Schedule 20 which contains the amendments necessary to implement the Convention on Supplementary Compensation for Nuclear Damage (CSC). Both the clause and the Schedule will come into force on the day on which the CSC comes into force in respect of the United Kingdom (and the Secretary of State must publish a notice of the date of that day as soon as possible afterwards).

Chapter 2: Civil Nuclear Constabulary

Clause 260: Provision of additional police services

635 This clause amends the Energy Act 2004 (c. 3) to insert a new section 55A, which creates an additional statutory function for the Civil Nuclear Constabulary (CNC). The new function will enable the CNC to provide a wider range of policing services beyond the civil nuclear sector, in the interests of national security. This could be used to enable the CNC to provide armed guarding services to other facilities that provide vital services, or to deliver other protective policing services in response to emerging threats. The provision of additional police services by the CNC may only be provided with the consent of the Secretary of State and is subject to safeguards to protect the CNC's primary civil nuclear security function and ensure transparency (subject to the needs of national security).

636 The clause also makes consequential amendments in relation to the CNC's jurisdiction and provides a power for the CNPA to enter into agreements. It also adds the CNC to the definition of "extra police services" in the Counter-Terrorism Act 2008 (c.28) in relation to the policing of gas facilities in England, Wales and Scotland.

Clause 261: Provision of assistance to other forces

637 This clause amends the Energy Act 2004 to insert a new section 55B, which enables the CNC's Chief Constable to provide CNC officers or other assistance to another police force in England, Wales or Scotland, in line with powers available to the England and Wales territorial police forces, the British Transport Police and the Ministry of Defence Police. The provision enables the CNC, in response to a request from the Chief Constable of another force, to provide support for spontaneous or planned deployments, and/or to provide specialist support as required, and is subject to safeguards to protect the CNC's primary civil nuclear security function. Where the CNC is providing assistance under this arrangement, CNC officer(s) would be under the direction and control of the chief officer of the requesting force and would have the same powers and privileges as a member of that force.

Clause 262: Cross-border enforcement powers

638 This clause amends the Criminal Justice and Public Order Act 1994 (c.33) so that members of the CNC are able exercise powers in Part 10 of that Act. Sections 136 and 137 of the Criminal Justice and Public Order Act 1994 deal with cross border enforcement by the police, whereby an individual who is suspected of committing an offence in one part of the UK can be apprehended in another part of the UK – either by the execution of a warrant or exercising powers of arrest in the absence of a warrant. In line with powers already available to members of the territorial police forces and the British Transport Police, the amendments will allow the CNC to execute a warrant to arrest a person, or to exercise powers of arrest without a warrant where the person is suspected to committing an offence, in England, Wales or Scotland. The amendments do not allow the CNC to exercise these powers in Northern Ireland since the CNC do not operate in Northern Ireland.

Clause 263: Publication of three-year strategy plan

639 This clause amends the legislative requirement for the Civil Nuclear Police Authority to publish a three-year strategy annually, to every three years.

Chapter 3: Relevant Nuclear Pension Schemes

Clause 264: Civil nuclear industry: amendment of relevant nuclear pension schemes

640 This clause enables regulations to be made requiring persons with responsibility for pension schemes for public sector employees in the nuclear sector to amend those schemes in line with wider changes to public sector pensions.

Clause 265: Meaning of "relevant nuclear pension scheme"

641 This clause defines "relevant nuclear pension scheme" for the purposes of the Chapter.

Clause 266: Information

642 This clause gives a person who is required, by regulations under clause 264, to amend a relevant nuclear pension scheme the power to require persons with relevant information to provide that information.

Clause 267: Further definitions

643 This clause sets out definitions relevant to the provisions about amendment of relevant

nuclear pension schemes.

Clause 268: Application of relevant pensions legislation

644 This clause enables the Secretary of State to make regulations about the application of relevant pensions legislation, or amending relevant pensions legislation, in connection with the amendment of a relevant nuclear pension scheme in pursuance of regulations under clause 264.

Clause 269: Procedure for regulations

645 This clause provides that a statutory instrument containing regulations under any provision of this chapter is subject to the affirmative procedure. It also provides for the disapplication of the hybrid instrument procedure in the House of Lords.

Part 14: General

Clause 270: Prohibition of new coal mines

646 The Coal Authority is the licensor for coal extraction in the UK and this clause would, within six months of the day on which the Act is passed, prohibit the opening of new coal mines and the licensing of new coal mines by the Coal Authority or its successors. The effect of this clause will prohibit future licensing of all new coal extraction, regardless of its use, including area extensions to existing coal mining in Great Britain. It would capture coal projects going through the licensing process that hadn't secured operational licenses by the time the prohibition comes into effect.

Clause 271: GEMA general duties relating to climate change

647 This clause amends the Gas Act 1986 and Electricity Act 1989 to include a specific requirement for GEMA and the Secretary of State to have regard to meeting the UK's net zero emissions target when carrying out their duties under that Act.

Clause 272: Community and Smaller-scale Electricity Export Guarantee Scheme

648 This clause requires the Secretary of State to make regulations within six months of the passing of the Act. These regulations must require licensed energy suppliers with more than 150,000 customers ("eligible licensed suppliers") to purchase electricity exports from sites that generate low carbon electricity with a capacity below 5MW, including from sites operated by community groups.

649 Subsection (2) prohibits fossil fuelled local power plants with a capacity of less than 5MW from participating in the scheme, with the exception of a local combined heat and power plant that generates electricity ancillary to its purpose of providing heat for local heat networks.

650 Subsection (4) provides that licensed energy suppliers with fewer than 150,000 customers may also purchase electricity exports from such sites provided they do so in accordance with the terms set out by the regulations.

651 Subsection (5) provides that the regulations must require eligible licensed suppliers to offer a minimum export price and a five year minimum contract period which generators can end after no more than one year.

652 Subsection (6) requires, within six months of the passing of the Act, the GEMA to set the minimum export price annually with regard to current wholesale energy prices and inflation in energy prices and the wider economy. It also requires GEMA to define

eligibility requirements of the scheme and to introduce a registration system for eligible exporting sites.

653 Subsection (7) sets out conditions for exporters to access export purchase agreements.

654 Subsection (8) requires licensed suppliers to report annually to GEMA on the number and capacity of sites that have been offered contracts and the number of these that agreed those contracts; the total amount of electricity purchased under these agreements, and the price paid for that electricity.

655 Subsection (9) requires OFGEM to report annually on the operation of the export purchase agreements including the number of sites with an export purchase agreement; the total amount of electricity purchased; an assessment of how the mechanism is performing and the contribution it is making to delivering secure and low carbon electricity supplies; and recommendations on how the mechanism could be improved.

656 Subsection (10) provides that regulations made under this clause are subject to the affirmative procedure.

Clause 273: Community and Smaller-scale Electricity Supplier Service

657 This clause requires the Secretary of State to make regulations, within six months of the day on which the Act is passed, requiring licensed electricity suppliers with more than 150,000 customers to offer a Community and Smaller-scale Electricity Supplier agreement to any registered community or smaller-scale energy generation scheme. The purpose of the agreement is to allow that site to sell electricity to local consumers. Eligible suppliers must report certain information annually to Ofgem concerning the agreements. Ofgem, as the regulator, must publish guidance on the level of local tariffs and the reasonable charges that eligible suppliers may charge for the provision of their services under the agreement, and must report annually on the operation of the agreements.

Clause 274: Power to make consequential provision

658 This clause confers on the Secretary of State a regulation making power to make consequential amendments which arise from this Bill. Regulations under this clause may amend this Energy Act or any provision of any other primary legislation or any provision made under that other legislation, that was passed before this Energy Act or in the same session of Parliament as this Energy Act. The amendments that can be made include amendments to legislation in the devolved administrations.

Clause 275: Regulations

659 This clause provides that regulations made under this Bill are to be made by statutory instrument.

660 Subsection (2) provides that, where regulations are made under this Bill those regulations may make different provision for different purposes or areas and also supplementary, incidental, transitional or saving provision. Subsections (3) to (4D) set out the Parliamentary procedure to be followed for regulations under the Act which will either follow the "negative procedure", the "affirmative procedure" or the "made affirmative" procedure. Where regulations made by the Secretary of State are subject to the negative resolution procedure, they are subject to annulment in pursuance of a resolution of either House of Parliament. Where such regulations are subject to the

affirmative resolution procedure, a draft of the regulations must be laid before Parliament and approved by a resolution of each House of Parliament. Regulations subject to the made affirmative procedure will cease to have effect 28 days after the day on which they are made unless approved by a resolution of each House of Parliament, but this will not affect the validity of anything done under the regulations during that 28-day period.

Clause 276: Interpretation

661 This clause provides information on how terms which are used throughout the Bill should be interpreted in the Bill. Separate interpretation provisions are found in other Parts of the Bill where those terms only appear in those Parts.

Clause 277: Extent

662 This clause sets out the extent of the Bill. Annex A provides further information.

Clause 278: Commencement

663 This clause sets out when provisions in the bill come into force. Provisions in the Bill which are not listed in subsections (2) to (4) will come into force on such a day as the Secretary of State may by regulations appoint. Certain provisions (subsection (2)) come into force on the day on which the Act is passed. Other provisions (subsection (3) come into force at the end of a period of 2 months beginning with the day on which the Act is passed. Clause 259 (and Schedule 20) come into force on the day the relevant convention comes into force.

Clause 279: Short title

664 This clause confirms the short title by which the Bill may be cited.

Schedule 1 – Interim power of Secretary of State to grant licences

665 This Schedule provides that section 7 to 12 of the Act will have effect subject to the modifications made by the Schedule until the end of the interim period. The effect of these modifications is that during the interim period it is the Secretary of State that will exercise those powers and not the economic regulator. Under the Schedule, the Secretary of State can make regulations setting out the date when the interim period ends i.e. date on which the power to grant licences authorising CO_2 transport and storage activities transfers from the Secretary of State to the economic regulator.

Schedule 2 – Procedure for appeals under section 20

666 Schedule 2 establishes the detailed procedure for appeals to the CMA in relation to decisions made by the economic regulator. The Schedule sets out the process by which appeals must be made, matters to be considered by the CMA and timeframes within which the CMA must determine the outcomes.

Schedule 3 – Enforcement of obligations of licence holders

667 Schedule 3 provides for the enforcement of conditions or requirements of CO2 transport and storage licence holders under Part 1, including procedural and other requirements which the economic regulator must comply with.. The Schedule sets out the process the economic regulator must follow when it is satisfied that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement and in relation to the imposition of financial penalties for such contraventions.

Schedule 4 – Transfer Schemes

668 Schedule 4 sets out the scope and obligations for any statutory transfer that is affected by

the Secretary of State.

Schedule 5 – Amendments related to Part 1

669 Schedule 5 provides for consequential amendments to the Utilities Act 2000 and Enterprise Act 2002 to reflect the functions and powers conferred on the Gas and Electricity Markets Authority as the economic regulator of CO_2 transport and storage under Part 1 and 2 of this Bill.

Schedule 6 – Carbon dioxide storage licences: licence provisions

670 This Schedule amends the standard conditions for CO2 storage licenses under Schedule 1 to the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010. The effect of these amendments is to replace the Oil and Gas Authority's (OGA's) current "after the event" powers in relation to change of control of carbon storage Licensees and permit operators with powers intended to apply before a change of control has taken place.

671 Licensees and permit operators must apply in writing to the OGA for consent at least three months before the planned date of the change of control. Following receipt of an application the OGA may give unconditional or conditional consent or refuse consent to the proposed change of control. If the OGA proposes to grant consent subject to any condition, or to refuse consent, it must give the relevant company the opportunity to make representations and then consider any such representations. This Schedule also gives an indication of the kind of conditions that may be imposed and sets out that notification of the OGA's decision and any conditions must be made in writing to the existing and proposed new Licensees. The OGA must generally decide an application within three months of receiving it, although may delay its decision by notifying the interested parties in writing.

672 This Schedule also makes amendments to the standard conditions in respect of the OGA's powers of revocation and partial revocation, again intended to replace the existing after the event powers with before the event powers.

Schedule 7 – Independent System Operator and Planner: transfers

Part 1 – Transfer schemes

Power to make a transfer scheme

673 This schedule empowers the Secretary of State to make transfer schemes to create the ISOP and give it the capacity to carry out its functions.

674 Sub paragraph (2) allows the Secretary of State to make a transfer scheme for energy code bodies. This power is expected to be used to transfer the code administrator Elexon, out of the ownership of the Electricity System Operator, in which it currently resides. This power expires after seven years following when the Act is passed.

Consultation

675 The Secretary of State must consult with the transferor and other bodies as they consider appropriate. Consultation can take place before or after this Act reaches Royal Assent.

Transfer of property, rights and liabilities

676 The transfer of property, rights or liabilities will take place on the date specified in the transfer scheme. A range of things could be included in a transfer scheme and these are listed.

677 Where a person works for the body being transferred, for example on secondment, but

does not have an employment contract with that body, a discretionary power is included to be able to treat that person as having a formal employment contract as part of a transfer scheme. Employees affected by a transfer scheme should have the opportunity to object to a transfer of their employment before the agreed transfer date.

678 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE regulations) protect the rights of employees when they transfer to a new employer. The contracts of the individuals to be transferred to the ISOP will be subject to TUPE regulations wherever they would otherwise be applicable. There are some circumstances under which employees would not usually be caught under (and granted the protection of) the TUPE regulations and paragraph 4 makes a power to extend TUPE protections where this would not naturally occur.

679 The aim is to make it possible for the transfer to the ISOP not to break employees' continuity of employment and their contracts transferred to the ISOP will be treated as if the ISOP was their original employer for this purpose.

680 The transfer scheme may provide that the ISOP honours a collective agreement previously implemented by the existing employer. A collective agreement is when an employer may have an agreement with employees' representatives (for instance a trade union or staff associations) that allows negotiations of terms and conditions like pay or working hours.

681 The precise requirements of the scheme cannot be determined in advance but given the complexity of the initial transfer it is desirable to allow the Secretary of State to make any provisions in the transfer scheme which may be necessary to deal with matters arising. These include unforeseen liabilities which should remain with the transferor, and other examples as described in sub-paragraph 6(1).

Compensation

682 Under paragraph 8 a transfer scheme may provide for the Secretary of State to pay compensation to the transferor as part of any transfer scheme related to the initial establishment of the ISOP or to enable it to carry out its functions and activities. The amount to be paid must be agreed by the Secretary of State and the relevant transferor. If an agreement is not reached, the Secretary of State and the transferor are required to jointly appoint an independent valuer to determine the compensation or, failing this, the Secretary of State can make the appointment on behalf of both parties. The Secretary of State can also nominate a person to act on their behalf.

683 The Secretary of State may by regulations set out the procedures to be followed by the valuer, matters to which the valuer must have regard, or assumptions which the valuer must apply. Provision can also be made to require the Secretary of State and transferor to provide the valuer with information, or regard for a valuation to be binding in specified circumstances.

Taxation

684 Paragraph 9 confers a power on HM Treasury to make regulations to alter how tax is treated in the course of a transfer scheme.

Power to amend transfer scheme

685 The Secretary of State can amend a transfer scheme if they consider that the amendment is appropriate in preparation of the designation of the ISOP, or to enable the ISOP to carry its functions. The Secretary of State has one year to use this power from the day the relevant transfer scheme takes effect. Compensation may be payable in relation to an

amendment to a transfer scheme, and provision is made for determination by an independent valuer if compensation cannot be agreed.

Part 2 – Other provision about transfers and designation

Provision of information or assistance

686 The Secretary of State has the power in connection with the making of a transfer scheme, or the designation of an ISOP, to direct a person to provide information or assistance to the Secretary of State. Requests must be responded to, so far as reasonably practicable, in the time, form and manner specified.

687 The Secretary of State is required to reimburse costs reasonably and efficiently incurred in complying with a direction to provide information or assistance. The Secretary of State is given civil enforcement powers in relation the requirements. This power expires three years after the ISOP is designated for the first time or, if a transfer scheme is made under paragraph 1(1), three years after the transfer takes effect.

688 The Secretary of State is also given a discretion to reimburse costs reasonably and efficiently incurred in complying with other reasonable requests to provide information to the Secretary of State in connection with designation or the making of a transfer scheme, including those made before the Act receives Royal Assent.

Co-operation

689 There is a duty on certain entities, specified in sub-paragraph (2), to cooperate with the Secretary of State in relation to the establishment of the ISOP.

Third parties: reimbursement and compensation

690 The Secretary of State can reimburse costs reasonably incurred in connection with the initial establishment of the ISOP or the making of a transfer scheme.

691 The Secretary of State may make regulations about payment of compensation to parties other than the transferor where loss or damage has occurred in consequence of a transfer scheme. For example, third parties who have contracts in place with the business being transferred.

Schedule 8 – Independent System Operator and Planner: Pensions

Introductory

692 As part of the transfer of functions from the incumbent to the ISOP a number of employees will be transferred to the ISOP. Provisions are required to allow the ISOP to support these employees' pension schemes, and to ensure that no value is lost in the transfer of these pension schemes.

Participation in qualifying pension schemes and transfer of assets and rights

693 As the pensions and employment arrangements regarding the creation of the ISOP cannot be determined in advance, this schedule empowers the Secretary of State to make regulations so that pension provisions can be updated, schemes changed, or new schemes created to reflect new corporate structures and the movement of employees. The Secretary of State is required to consult with the trustee of the qualifying pension scheme and the principal employer.

Amendment of qualifying pension schemes

694 The Secretary of State may make regulations to amend a pension scheme, including retrospectively, related to the initial establishment of the ISOP or the making of a

transfer scheme under paragraph 1 of Schedule 1. This can include provisions to determine the amount of benefits payable by reference to pensionable service and provisions to allow members to become members of another scheme when a pension scheme is divided into different sections. Any such changes are subject to consultation with the relevant scheme employers and pension scheme trustees.

Protection against adverse treatment

695 The Secretary of State must ensure that the pension provision of employees will be at least as good immediately after the Secretary of State exercises the power to make regulations under this Schedule as it was before. The Secretary of State cannot change a pension scheme that might adversely affect the rights and benefits of its members unless member consent is obtained, or if the amendment is made in a prescribed way.

Information and assistance

696 The Secretary of State has the power to request information or documents to be provided to them by the trustee of a qualifying pension scheme, the relevant person carrying those functions or any current or past employer of a qualifying pension scheme. The Secretary of State must reimburse costs reasonably and efficiently incurred by a person in responding to such a request. This power expires three years after the ISOP is designated for the first time or, if a transfer scheme is made under paragraph 1(1), three years after the transfer takes effect.

697 The request must be responded to, as far as possible, in the time, form and manner specified in the notice. Where reasonable requests for information are not complied with, enforcement action is made available.

Consultation

698 Any consultation required under this Schedule can be carried out before or after the Energy Bill 2022 receives Royal Assent.

Schedule 9: Minor and consequential amendments relating to Part 4

699 Consequential amendments are needed to the Gas Act 1986 and Electricity Act 1989 to enable the ISOP, and its licensable activities, to be integrated into the existing framework of the energy system regulated by Ofgem. Paragraph 8 makes consequential amendments to the 'information gateway' provisions of Utilities Act 2000, to ensure that information obtained using powers under Part 4 is appropriately protected.

Schedule 10: Governance of gas and electricity industry codes: transitional provision

Meaning of "qualifying document", "qualifying contract" and "qualifying central system"

700 This paragraph empowers the Secretary of State to create lists of documents, contracts and central systems that the transitionary powers in this Schedule can be applied to. It also defines relevant terms.

Purpose for which powers under this Schedule may be exercised

701 This paragraph limits the scope of the transitional powers granted in this Schedule so that they cannot be used for anything other than their intended purpose.

Expiry of powers under this Schedule

702 The transitional powers in this Schedule are intended to be temporary in nature. They can expire in one of two ways: on a code-by-code basis, once all the transitionary

changes have been made in relation to that specific code; or after a period of seven years, if earlier, for any codes that have yet to complete their transition process. This means that the transitional powers may remain active for some codes longer than they do for others, depending on how the reforms are sequenced by the GEMA.

Modification of qualifying documents and relevant licences

703 To implement code reform, it will be necessary for the GEMA to modify documents and licence conditions. This clause gives the GEMA such powers and details the processes it must follow when using them, including who must be consulted and informed.

Amendment or termination of qualifying contracts

704 To implement code reform, it may be necessary for the GEMA to amend or terminate existing contracts of parties that are currently engaged in activities related to energy code governance. For example, it may be necessary to amend the contracts of parties that operate central systems so that they are able to recover any costs efficiently incurred when complying with a direction from the GEMA. This clause gives the GEMA such powers and sets out the processes it must follow when using them, including who must be consulted and informed.

Arrangements in connection with code consolidation

705 The transition to the new code governance framework may involve a period of code consolidation, in which one or more of the existing codes may be merged together, or into one or more new codes. Two of the existing codes, the Uniform Network Code and the Balancing and Settlement Code, are central to the operation of the gas and electricity markets. If either of these codes were to be merged into the other, there is a risk that the underpinning of the associated market would cease to exist as a result. To avoid this problem, this clause grants the GEMA the power to create a scheme that would allow contracts established under one or more existing codes to be merged into contracts established under one or more newly consolidated codes, without any risk of disruption.

Transfer schemes

706 The transition to the new code governance framework may require staff, physical IT assets and service contracts to be moved from one organisation to another. In some cases, the transfer of the relevant item might be agreed between the various parties, such as the outgoing code administrator and the incoming code manager, but a negotiated outcome cannot be guaranteed. This section therefore grants the GEMA the power to create transfer schemes for the purposes of implementing code reform, which will allow it to ensure that the newly created code managers will have all the things that they need to do their jobs. It also describes the processes that the GEMA will need to follow when using this power, including a requirement to obtain approval for each scheme from the Secretary of State.

Information

707 This part of the Schedule grants the GEMA the power to obtain information from any person if it is required for the purpose of implementing code reform.

Compensation

708 The code governance reforms may have an adverse financial impact on certain parties, for example those who have lost contracts or employees. This provision establishes a duty for the relevant code manager to compensate persons as required. It also describes how claims for compensation related to the use of these powers will be handled, as well

as who is eligible to claim compensation. The Secretary of State may in each case give a direction on who is to pay compensation if it is not appropriate for the code manager to pay.

Other

709 This provision is self-explanatory.

Schedule 11: Governance of gas and electricity industry codes: pensions

Introductory

710 This paragraph sets out the power for the GEMA to create transfer schemes that will allow it to move employees from an existing organization, such as a code administrator, to an incoming code manager. To ensure that the pension provisions in respect of these employees are not adversely affected by this transfer, there may be a need to make consequential changes to their pension schemes. This paragraph defines the key terms that are used throughout this schedule, for example what is meant by a qualifying member (i.e., a past or present member of a qualifying pension scheme) or a qualifying pension scheme (i.e., a pension scheme which provides pensions or other benefits to employees of the transferring organization).

Participation in qualifying and other pension schemes

711 This paragraph allows the GEMA to make regulations so that it can make different kinds of provisions in relation to qualifying pension schemes in preparation for the granting of a code manager licence. Examples include provision for the division and reallocation of assets within a pension scheme and enabling participation in the scheme by specific persons. Under this paragraph, the GEMA is obliged to consult with appropriate parties. The making of these regulations is subject to the approval of the Secretary of State.

Amendment of qualifying pension schemes

712 This paragraph enables the GEMA to make regulations to amend qualifying pension schemes in cases where staff will need to be transferred between organisations in preparation for the granting of a code manager licence. Examples of potential amendments include provision for the transfer of assets, rights, liabilities or obligations between relevant pension schemes. Under this paragraph, the GEMA is obliged to consult with appropriate parties. The making of these regulations is subject to the approval of the Secretary of State.

Protection against adverse treatment

713 This paragraph outlines the GEMA's duty to ensure that qualifying members of affected pensions schemes are not adversely impacted in material terms in respect of their pension provisions as a result of these reforms. This paragraph also sets out that the GEMA's power to amend qualifying pension schemes under this provision is subject to the prescribed consent requirements in those pension schemes.

Information

714 This paragraph grants the GEMA the power to obtain relevant information in relation to a qualifying pension scheme from any person if it relates to the benefits or administration of such a pension scheme, with such powers enforceable in civil proceedings.

Schedule 12: Minor and consequential amendments: Part 5

Gas Act 1986

715 Paragraphs 1 to 4 amend the Gas Act 1986 to ensure that the bodies responsible for operating a designated central system (i.e., an IT system connected with the maintenance, operation, or data storage of a designated document) are treated as regulated persons when subject to a direction from the GEMA under clause 149 of this Bill. This amendment will allow the GEMA to use its enforcement powers if the responsible body in questions fails to comply with a direction.

Electricity Act 1989

716 Paragraphs 5 to 8 amend the Electricity Act 1986 to ensure that the bodies responsible for operating a designated central system (i.e., an IT system connected with the maintenance, operation, or data storage of a designated document) are treated as regulated persons when subject to a direction from the GEMA under clause 149 of this Bill. This amendment will allow the GEMA to use its enforcement powers if the responsible body in questions fails to comply with a direction.

Energy Act 2004

717 The GEMA is responsible for deciding whether to approve major changes to the energy codes. Paragraphs 9 to 11 make two amendments to the Energy Act 2004 related to how appeals of these decisions are handled. First, it extends the timeline of relevant appeals from one month to four months to bring it in line with appeals of other Ofgem decisions, such as licence modifications. Second, it adds decisions made by the GEMA in connection with the direct modification of designated documents power granted by clause 147 of the Bill to the list of decisions that can be appealed to the CMA.

Schedule 13: Competitive tenders for electricity projects

Part 1 – Amendments of Electricity Act 1989

718 Paragraph 1 of the Schedule provides that the amendments described by the subsequent paragraphs are made to the Electricity Act 1989 ("the Act").

719 Paragraph 2 adds two new sections to the Act. The first enables the Secretary of State to make regulations setting criteria to be applied to electricity projects to determine their eligibility for competitive tenders, which in turn allows for competition to be enabled in respect of certain electricity projects. 'Relevant electricity project' is defined for that purpose. The second enables the Secretary of State to appoint a 'delivery body' to run tenders for electricity projects, both onshore and offshore. The Secretary of State may appoint different bodies to run different types of competition (for example, for onshore and offshore networks, where appropriate). It will also allow for the Secretary of State to indemnify a delivery body, where that body is not the Authority (Ofgem), for cost incurred in association with any judicial review proceedings brought against them in relation to a competitive tender under this Part of the Act.

720 Paragraph 3 substitutes existing sections 6C and 6D of the Act with five new sections. New section 6C enables the Authority to make regulations to facilitate tenders ("tender regulations"). The other four new sections set out the scope of what tender regulations may cover. This includes functions and powers of the Authority (Ofgem) and the delivery body, the methodology for tenders, and the recovery by the Authority and/or delivery body of costs expended in association with tenders. In order to allow for effective tenders, tender regulations may also include provision for the Authority, delivery body and a contract counterparty to seek information which is relevant to tenders. New section 6CC of the Act details the treatment of connection applicants.

721 Paragraph 4 amends section 6E of the Electricity Act 1989 to allow property schemes created in furtherance of a competition run under this part of the Act to cover onshore network solutions as well as offshore tenders. Property schemes allow for the creation or transference of property, rights or liabilities necessary for the preferred and/or successful bidder to deliver the outcome of the competition.

722 Paragraphs 5 and 6 amend sections 6F and 6G of the Act respectively to allow for transmission to take place during a commissioning period without the person undertaking the activity needing a transmission licence.

723 Paragraph 7 amends section 6H of the Act to give the Authority (Ofgem) the ability to amend licences and codes to give effect to the outcome of competitions onshore as well as offshore.

724 Paragraph 8 amends section 11A of the Act. Section 11A sets out the process to modify conditions under licences granted by the Authority (Ofgem). This amendment clarifies that this general process to modify conditions does not apply to modification of conditions of licences following a competition. For this scenario, new section 6CC(5)(a) (set out in paragraph 2 of Schedule 5) applies and sets the process for such modifications.

725 Paragraph 9 amends section 64 of the Act, which sets out definitions used in this Part of the Electricity Act 1989, to include definitions introduced by new clauses in this legislative measure.

726 Paragraphs 10 to 26 amend Schedule 2A of the Act to cover onshore as well as offshore electricity networks in terms of property schemes

727 Paragraph 11 enables the Authority (Ofgem) to make a property scheme which allows for the creation or transfer, as is relevant, of rights, liabilities and property necessary or expedient for operational purposes to enable delivery of the outcome of a competitive tender in onshore electricity networks.

728 Paragraph 12 clarifies that a property scheme should not be created if the Authority (Ofgem) considers it appropriate that the successful bidder obtains the relevant rights, liability and property by another route.

729 Paragraph 13 revokes paragraph 5 of Schedule 2A of the Act. This was a sunset clause, which limited property schemes to the transitional period after offshore competition clauses were introduced.

730 Paragraph 14 makes amendments to paragraph 12 of Schedule 2A to allow property schemes (as described above) made under Schedule 2A to cover scenarios of construction and commissioning of an asset, as well as operation. This gives effect to onshore competition where early or late model competitions are used; that is, competition before or after planning permission for the build, ownership and operation of a network solution. This extends from the current regime for offshore networks, which only allows for very late model competition, where only the ownership and operation of an asset which is already built is tendered for.

731 Paragraph 15 clarifies that no property scheme can be made until the relevant licence or contract (as appropriate to the winning solution) is in place.

732 Paragraphs 16 to 20 make amendments to other paragraphs in Schedule 2A in the same way as set out in Paragraph 14 for paragraph 12 of Schedule 2A, so that Schedule 2A can be used in onshore as well as offshore competition.

733 Paragraph 21 amends Paragraph 35 of Schedule 2A: paragraph 35 now sets out notification procedures for the Authority (Ofgem) or a contract counterparty to notify of its intent to grant a licence and/ or grant a contract to the winning bidder. The amendment extends the current paragraph 35 from just the Authority's notification to a contract counterparty's notification. This gives effect to competition to allow for licensable and non-licensable solutions as an outcome of onshore competition.

734 Paragraph 22 amends paragraph 36, which sets out processes and definition of a successful bidder, to cover onshore and offshore competition, and licensable and non-licensable solutions.

735 Paragraph 23 inserts a new paragraph providing the Authority (Ofgem) with powers to appoint a transmission owner or distribution owner of last resort in the event that the winning bidder's solution or the owner is unable to continue functioning under the terms of its contract and/or licence.

736 Paragraph 24 amends definitions used in Schedule 2A of the Act to refer to onshore and offshore competitions.

737 Paragraph 25 amends paragraph 6 in Schedule 4 of the Act to allow for winners of onshore competition exercises to be included in provisions regarding powers of licence holders.

Part 2 – Other amendments

738 Paragraph 26 amends section 105 of the Utilities Act 2000 to allow disclosure of information protected under that section by a contract counterparty, the Authority or delivery body if required to deliver functions set out in the Act (as amended by these provisions) and regulations made under new section 6C of the Electricity Act 1989.

Schedule 14: Mergers of Energy Network Enterprises

Part 1: Further Duties of Competition and Markets Authority to Make References

Paragraph 1: Amending Part 3 of the Enterprise Act 2002

739 This paragraph is self-explanatory.

Paragraph 2: Insertions following Section 68 of the Enterprise Act 2002

740 Paragraph 2 inserts sections 68A to 68F into Part 3 of the Enterprise Act 2002.

741 Section 68A defines what amounts to an energy network merger for the purposes of the Energy Networks Special Merger Regime. Relevant energy network mergers will be considered by the CMA under the Energy Networks Special Mergers Regime.

742 An energy network merger is a merger between energy network enterprises that hold the same type of licence. Energy network enterprises within scope of the Energy Networks Special Mergers Regime are defined by virtue of the licence they hold under the licencing regime in Great Britain. For example, a merger between two Distribution Network Operators (DNOs), who both hold a licence under section 6(1)(c) of the Electricity Act 1989 would qualify as a relevant merger situation.

743 This section includes a power for the Secretary of State to amend the type of enterprise that is considered as an energy network enterprise by reference to the type of licence it holds. If the Secretary of State relies on this power, they must consult with the CMA and GEMA. The Government expects Ofgem to carry out the duties bestowed on GEMA.

744 The Enterprise Act 2002, which will be amended to include the Energy Networks Special

Merger regime, has UK wide extent and thus the Energy Networks Special Mergers regime will form part of the law of the UK. The Energy Networks Special Merger Regime will only apply in England, Wales and Scotland because under section 68A, the only enterprises that will be in scope of the regime are energy network enterprises holding certain licences under s.7 of the Gas Act 1986 or s.6 of the Electricity Act 1989. The relevant provisions of both the Gas Act 1986 and the Electricity Act 1989 extend to and apply in Great Britain.

745 Section 68B confers a duty on the CMA to refer a completed energy network merger to a full investigation by a CMA group if they think that a certain type of substantial prejudice has occurred or may occur.

746 The CMA will consider, whether the merger has substantially prejudiced, or may substantially prejudice, the independent energy regulator, GEMA, in its ability to carry out its functions to make comparisons between energy network enterprises of the type involved in the merger. If the CMA concludes that it has, or may, result in substantial prejudice, then the CMA comes under the duty to refer unless the CMA believes that there is a customer benefit that outweighs the prejudice.

747 This section provides that the CMA must not make a reference in certain circumstances (set out in section 22(3) Enterprise Act 2002). The CMA must not make a reference for full investigation where:

- it has failed to make a decision on referral within 40 working days (subject to an extension of 20 working days in certain circumstances) from the date it notified the merging enterprises of its initial investigation;
- an undertaking in lieu of referral for full investigation has been accepted;
- the CMA is considering whether to accept an undertaking in lieu;
- the Secretary of State has served an intervention notice under section 42(2) of the Enterprise Act 2002, because the energy network merger raises a public interest consideration that needs to be taken into account, and this intervention notice is in force or has been determined. This is provided the Secretary of State has not asked the CMA to deal with the merger under section 68B.

748 Section 68B also provides that the referral to full investigation must specify the enactment under which it is made, and the date on which it is made.

749 Section 68C confers a duty on the CMA to refer an anticipated energy network merger (a merger which is in progress or contemplation but not completed) to a full investigation by a CMA group if they think that a substantial prejudice may occur.

750 Everything listed in the explanatory note for section 68B (on when the CMA must refer, may refer and must not refer a merger to full investigation) also applies to anticipated mergers under section 68C, save that, if an intervention notice is served then the CMA must not refer the merger for a full investigation unless the Secretary of State has asked the CMA to deal with the merger under section 68C.

751 Section 68C also provides, in respect of an anticipated merger, that the CMA is not obliged to refer the merger for full investigation where it is not sufficiently advanced or sufficiently likely to go ahead as to justify being investigated at this stage.

752 Section 68D requires the CMA to consider the opinion of GEMA when forming a view on whether to refer the energy network merger for full investigation by a CMA group.

The Government expects Ofgem to carry out the duties bestowed on GEMA.

753 Subsection (2) provides that GEMA must give its opinion on whether and to what extent the merger has or may be expected to prejudice its ability to make comparisons between energy network enterprises of the type involved in the merger and whether any prejudice is outweighed by any relevant consumer benefits the merger may result in.

754 GEMA must prepare and publish a 'statement of methods' which explains how it will form its opinion.

755 GEMA must consult on the 'statement of methods' before preparing or altering it. Subsection (5) includes a list of statutory consultees. There is no obligation on the consultees to respond to the consultation.

756 The statement of methods must include the criteria that GEMA will use to assess prejudice and the relative weight of the criteria.

757 GEMA must from time to time review the statement of methods and where appropriate, update it.

758 Section 68E makes provision for where a merger falls within scope of both the Energy Networks Special Merger Regime, and the substantial lessening of competition regime. In this situation, the CMA may make a reference under both regimes, described as a "combined reference".

759 This section sets out that combined references (i.e. investigations) may be dealt with and considered by the same group in the CMA.

760 The group(s) investigating the merger is/are empowered to prepare and provide a joint report which sets out its/their findings on both the referrals. They do not have to issue a joint report if they deem it more appropriate to issue single reports.

761 Section 68F sets out that in relation to references made under the provisions in sections 68B and 68C (with related provisions in sections 68A to E), Chapter 1 of Part 3 of the Enterprise Act 2002 applies in conjunction with the modifications set out in Schedule 5A to the Enterprise Act 2002.

Paragraph 3: Insertion of Schedule 5A to the Enterprise Act 2002, Modification of Chapter 1 of Part 3

762 This paragraph provides modifications which should be read into certain sections in Chapter 1 of Part 3 of the Enterprise Act . Modifications – as opposed to amendments - mean that, while certain sections are not directly amended on their face, they should be read as if they have been when a merger is being considered under the Energy Networks Special Mergers Regime. For example, under paragraph 4 of Schedule 5A, in section 30 on relevant customer benefit (which sets out when a benefit is to be deemed a relevant consumer benefit under the substantial lessening of competition regime) references to "lessening of competition concerned" should be read as "substantial prejudice to the Gas and Electricity Markets Authority" when a merger is being considered under the Energy Networks Special Mergers Regime.

763 The modifications set out in this paragraph relate to the following points: (1) General modifications; (2) Turnover test; (3) Relevant customer benefits; (4) Time limits for decisions about references; (5) Questions to be decided in relation to completed mergers; (6) Questions to be decided in relation to anticipated mergers; and (7) Duty to remedy effects of completed or anticipated mergers. These modifications are all to address the details of the Energy Networks Special Mergers Regime.

764 Paragraphs 2 and 3 of Schedule 5A modify sections 23 and 28 of the Enterprise Act 2002 to ensure that the turnover threshold which determines which energy network enterprises are within scope of the Energy Networks Special Mergers Regime, only takes account of an enterprise's turnover in Great Britain, rather than the United Kingdom. This reflects the policy position that the Energy Networks Special Mergers Regime will apply only to energy network enterprises that operate under the licensing regime in Great Britain.

Part 2: Consequential Amendments of Part 3 of Enterprise Act 2002

765 Paragraphs 4 through 34 set out the Consequential Amendments to Part 3 of the Enterprise Act 2002.

Part 3: Consequential Amendments of Other Enactments

766 Paragraphs 35 and 36 set out the Consequential Amendments to the Enterprise and Regulatory Reform Act 2013 and Utilities Act 2000.

Schedule 15: Multi-purpose Interconnectors: Consequential Amendments

767 This schedule sets out the consequential amendments which the introduction of multi-purpose interconnector licensing will necessitate to the Electricity Act 1989 and other primary legislation.

Schedule 16: Heat Networks Regulation

Part 1 – Interpretation

768 This part provides a definition of various terms used elsewhere in the Schedule.

Part 2 – General provision as to the Regulator

769 This part sets out what regulations may provide for in relation to the objectives of the heat networks regulator, its general duties and the publication of reports and maintenance of records. Regulations may include the regulator's principal objective of protecting existing and future heat network consumers. The part also sets out what regulations may provide for in relation to the duties and functions of the regulator.

Part 3 – Heat network authorisations

770 This part sets out what regulations may provide for in relation to authorising activities relating to heat networks, including that certain activities (examples might be operating a heat network or supplying heat through a heat network) are prohibited without an authorisation. This part also sets out the subject matter of conditions that may be included in authorisations, for example regarding compliance with technical standards, consumer protections on pricing, standards of service, and payment of fees to the regulator. Regulations may also provide for such authorisations to be modified, reviewed and/or revoked.

Part 4 – Code governance

771 This part sets out what regulations may provide for regarding the designation of a code or other document setting out, for example, the technical standards of how to design, build or operate a heat network. It also provides that a 'code manager' may be appointed with responsibility for the management and governance of such documents, in accordance with a code manager licence. Regulations may also specify the content of a code manager licence and set out the circumstances and process by which designated documents and conditions of a code manager licence may be modified.

Part 5 – Installation and maintenance licences

772 This part sets out what regulations may provide for regarding the issuance of licences which grant rights relating to the installation and maintenance of heat networks. These rights may include access rights and easements in relation to land, streets, railways, waterways and tramways. Regulations may also set out provisions in relation to licence fees and the validity period of licences, as well as their transfer, modification, review and revocation.

Part 6 – Enforcement of conditions

773 This part sets out what regulations may provide for regarding the regulator's enforcement powers in respect of non-compliance by authorised or licensed parties (as discussed in Parts 3 and 5 respectively). In particular, the regulations may provide for the process and circumstances by which the regulator issues provisional and final enforcement orders, financial penalties, and consumer redress orders. The regulations may also provide for how parties may challenge enforcement actions imposed. This part also allows for the provision of concurrent competition law powers to the regulator.

Part 7 – Investigation

774 This part sets out what regulations may provide for regarding the regulator's powers to investigate cases where prices charged to heat networks consumers appear to be disproportionate. Regulations may provide for the information that may be requested by the regulator and the steps that it may take to support its regulatory functions in relation to pricing and more generally (e.g. in relation to consumer protection, decarbonisation, and technical standards). It also allows for the regulator to delegate its investigatory powers to another party.

Part 8 – Step-in arrangements

775 This part sets out the provisions that regulations may include regarding the transfer of responsibility for heat network activity from one authorised entity ('the old entity') to another ('the new entity'). In particular, regulations may provide for the regulator to establish one or more schemes which allow the new entity to carry out the transferred activity in an effective manner. Regulations may also provide for the old entity to provide the regulator with such information and assistance as is required, for the regulator to direct the old entity to take or not take certain steps, for the regulator to make payments to the new entity and to indemnify the new entity from certain liabilities.

Part 9 – Special administration regime

776 This part sets out that regulations may provide for the introduction of a special administration scheme for heat network operators, similar to that which operates for gas transporters and electricity transmission and distribution network operators (as introduced in sections 157 to 171 of the Energy Act 2004).

Part 10 – Supply to premises

777 This part sets out what regulations may provide for in relation to heat metering, including duties on authorised entities to install heat meters and powers for authorised entities to enter premises to carry out activities related to metering. The part also sets out that regulations may provide duties on authorised entities in relation to offering heat networks connections (whether for the supply of heat, cooling or hot water to premises or the supply of heat to a heat network).

Part 11 – Consumer protection

778 This part sets out that regulations may provide for the heat networks regulator to make

regulations prescribing standards of performance affecting heat network consumers. For example, the regulations may provide for compensation to be paid to consumers affected by a failure by an authorised entity to meet a standard of performance. This part also sets out that regulations may provide for various Parts of the Consumers, Estate Agents and Redress Act 2007 to apply in relation to heat network consumers. This will allow for the operating of a consumer advocacy body and provision about complaints handling and redress schemes (in a similar way to the gas and electricity markets) for heat network consumers.

Part 12 – Financial arrangements

779 This part sets out that the regulations may make provision in authorisation conditions (as discussed in Part 3 of this Schedule) regarding payments to support financial assistance under the special administration regime envisaged by Part 9 and payments to bodies who provide consumer advocacy and advice to heat network customers.

Part 13 – Miscellaneous and general

780 This part sets out that regulations may provide for the creation of offences and related matters, including around requirements to provide information. It sets out that regulations may provide for the objectives of the Secretary of State and the Department of the Economy in Northern Ireland when carrying out their functions. It also allows regulations to provide for application to the Crown.

Schedule 17: Licensing of activities relating to load control

781 Schedule 17 inserts the following new sections into the Electricity Act 1989:

- 56FBA New licensable activities: load control of energy smart appliances
- 56FBB Regulations made under section 56FBA

Section 56FBA: New licensable activities: load control of energy smart appliances

782 Section 56FBA gives the Secretary of State the power to make regulations which add to the activities that are licensable under the Electricity Act 1989 any one or more new activities which are connected with the carrying on or facilitating of load control or the provision of services of facilities for that purpose. This will ensure that licence conditions can be placed on organisations undertaking those activities, so that they can be effectively regulated. An example of load control activity which could be made licensable is where an entity manages energy smart appliances to shift electricity consumption and help balance the electricity grid. Licence conditions may include, for example, ensuring that load controllers operate in a way which protects the security and stability of the electricity system, and act in a fair manner towards consumers.

783 Once activities become licensable, it will be an offence under section 4(1) of the Electricity Act to undertake them without a licence, unless they are made exempt by virtue of an order under section 5(1) of that Act.

784 The regulations can also include any necessary consequential, transitional, incidental or supplementary changes to primary legislation. This will enable the Secretary of State to make any amendments necessary to ensure that the new licences fit within the existing statutory framework. The Secretary of State may also make transitional provisions relating to anyone who is already carrying out a relevant activity before it becomes licensable (for instance, to allow them time to adjust to the new arrangements and comply with licence conditions that will be placed on them).

Section 56FBB: Regulations made under section 56FBA

785 This section sets out the procedure with which the Secretary of State must comply when making regulations under section 56FBA. For example, it obliges the Secretary of State to consult the Authority and others as appropriate before making the regulations. The section states that the power to make regulations cannot be exercised after the end of a period of seven years, beginning when the first regulations come into force. Regulations to introduce a new licensable activity are subject to the affirmative resolution procedure.

786 This section also amends section 56FC(2) of the Electricity Act 1989 to give the Secretary of State power to make regulations providing for the award of a licence through competitive tender to a person who will provide these centralised services by extending the existing relevant power within the Electricity Act to include load control activities. The Secretary of State may wish to ensure the establishment of a centralised body that will provide data and/or communication services to all of those who hold licences in relation to the provision of load control, and through which communications with relevant smart devices must or may be made.

787 It also amends section 106(2) of the Electricity Act to exempt new licensable activities regulations from being subject to the negative parliamentary process (since they are instead subject to the affirmative process by virtue of 56FBB(3)).

Schedule 18: Enforcement undertakings

788 For the purposes of Part 10, this Schedule provides as to how the procedure to be followed concerning enforcement undertakings (section 3) is to be published. It sets out how an enforcement undertaking can be varied and how to certify that it has been complied with, the steps to take if the undertaker provides inaccurate, incomplete or misleading information, and the appeals procedure.

Schedule 19: Petroleum licences: amendments to model clauses

789 This Schedule amends the Petroleum Licensing (Production) (Seaward Areas) Regulations 2008 and the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014 to replace the Oil and Gas Authority (OGA) after the event powers in relation to change of control of petroleum Licensees with powers intended to apply before a change of control has taken place.

790 It sets out that if a change of control of a petroleum Licensee is contemplated, the Licensee must apply in writing to the OGA for consent at least three months before the planned date of the change of control. Following receipt of an application the OGA may give unconditional or conditional consent or refuse consent to the proposed change of control. If the OGA proposes to grant consent subject to any condition, or to refuse consent, it must give the relevant company the opportunity to make representations and then consider any such representations. This Schedule also gives an indication of the kind of conditions that may be imposed and sets out that notification of the OGA's decision and any conditions must be made in writing to the existing and proposed new Licensees. The OGA must generally decide an application within three months of receiving it, although may delay its decision by notifying the interested parties in writing.

791 This Schedule also introduces amendments in respect of the OGA's powers of revocation and partial revocation, again intended to replace the existing after the event powers with before the event powers.

Schedule 20: Accession to the CSC: Amendment of The Nuclear Installations Act 1965

792 This Schedule amends the Nuclear Installations Act 1965 (the Act) to make provision for the UK's intended accession to the CSC.

Paragraph 1

793 Paragraph 1 amends section 13 of the Act, to ensure that in the event that a person not subject to a duty under the Act pays compensation, they are able to claim under the Act against the holder of the duty. As previously noted, the UK is already party to the Paris and Brussels Conventions regarding nuclear third-party liabilities and this provision currently applies in respect of those Conventions.

Paragraphs 2 and 3

794 Paragraph 2 amends section 16 of the Act. This section sets the liability limits of operators or licensees in respect of any breach of the duties set out in the Act, as well as the parameters for claims against the "appropriate authority" (in most cases, the Secretary of State).

795 At present, the Act distinguishes between claims arising from states that are party to the Paris Convention, and those arising from states that are also party to the Brussels Convention. The addition of the CSC into the UK's nuclear third-party liability landscape necessitates amendment to this classification system. The classification of the claim affects the maximum level of compensation available, and how the amount is comprised under the different regimes.

796 Subparagraph (2) removes payments that are limited to CSC relevant claims from the limit of £700 million for a breach of Paris Convention duties imposed by the Act. Subparagraph (3) specifies that the liability limit imposed on operators under claims which relate only to the CSC is 300 million Special Drawing Rights (SDR – which are defined in paragraph 6).

797 Subparagraphs (7) and (8) set out the various liability limits on the Scottish Ministers or Secretary of State, as applicable, for the different types and combinations of potential claims under the Paris, Brussels and CSC treaties. Subparagraph (8) also provides for restrictions on the distribution of the CSC international pooled fund. Only 50% of the fund can be used to satisfy domestic CSC claims, with the remaining 50% reserved for the compensation of claims originating in other CSC countries.

798 Subparagraphs (4), (5), (6), (9) and (10), and paragraphs 3 and 5 make the necessary consequential amendments to reflect the above changes to section 16 of the Act.

Paragraph 4

799 Paragraph 4 inserts a new section into the Act (section 16AA). This section defines a number of terms related to CSC claims for the purposes of the amended section 16.

800 Subsection (1) of the new section 16AA clarifies that this section applies for the purposes of section 16. Subsections (2) and (3) set out the required elements to establish a "CSC claim".

801 Subsections (4) to (6) build upon subsection (3) by defining when a CSC claim is a "CSC-only claim". As subsection (5) sets out, a claim becomes CSC-only when the injury, damage or significant impairment of the environment occurs solely within the territory, or related territory/property, of a CSC-only country. Subsection (6) defines a "CSC-only territory" as one which is not party to any other international nuclear third-party

liability agreement (and is not the UK).

802 Subsections (7) and (8) define a "non-UK CSC claim", with reference to injury, damage or significant impairment of the environment that occurs in a CSC territory (or related territory/property) other than the UK.

803 Subsection (9) contains further definitions relevant to this section.

Paragraph 6

804 Paragraph 6 (subparagraph (2)) amends section 18 of the Act to increase the value of funds able to be agreed by Parliament to the aggregate value of the Paris and Brussels Conventions (including the Brussels international pooled fund (1,500 million euros)) and the CSC international pooled fund.

805 Subparagraphs (3) and (4) make the necessary consequential amendments to section 18 to reflect these changes.

Paragraph 7

806 Paragraph 7 inserts a new section (25C) to define the term "special drawing rights" and provides for the determination of the equivalent amount in sterling; the conversion is to be undertaken in line with the International Monetary Fund's fixed rates, and a certificate from the Treasury stating that a particular conversion rate has been fixed in this way is to be considered conclusive on this question. The Treasury may charge a reasonable fee for providing such a certificate.

Paragraph 8

807 Paragraph 8 inserts certain of the new definitions relating to the CSC into section 26, the interpretation section of the Act, as well as making consequential provision for certain existing definitions so that they apply in relation to the CSC.

Commencement

808 Clause 247 makes provision about when the provisions of this Bill will come into force.

Financial implications of the Bill

809 The financial implications associated with the majority of the Bill provisions will only arise if and when enacted by regulations. The Impact Assessment includes estimates of the potential costs and benefits of these regulations. For the measures where consumer bill impacts have been quantified, there is estimated to be a small average annual energy bill cost of less than just £1 for dual fuel households out to 2030.

810 The Bill provides for the Secretary of State to give financial assistance in respect of carbon dioxide transport and storage, carbon capture, low carbon hydrogen production and hydrogen transport and storage (clause 100) as well as Core Fuel Resilience (clause 227).

811 The UK Government committed to a £1 billion CCUS Infrastructure Fund (CIF) to contribute to the capital costs of establishing carbon dioxide transport and storage infrastructure, and capital support for early industrial capture projects. The CIF was announced at the March 2020 Budget and its allocation confirmed at the Spending Review 2020. Revenue support for CO_2 transport and storage companies will be recovered from users of the networks. Costs recovered through fees on transport and

storage licensees will be paid into the Consolidated Fund.

812 Funding will be provided in respect of carbon capture and low carbon hydrogen production through the Industrial Decarbonisation and Hydrogen Revenue Support scheme which was established in Spending Review 2021. It is anticipated that from 2025, funding for low carbon hydrogen production, through the same scheme, will be provided through the hydrogen levy (subject to consultation and legislation being in place). Initial support for hydrogen may include infrastructure for the transportation and storage of hydrogen.

813 The Bill provides for a transfer scheme connected with the system code operator reform measures which includes for compensation. In respect of the pension provisions connected with these measures are two further spending powers which provides for shortfalls and reimbursement of reasonable costs incurred. Once the Independent System Operator and Planner is established, the Secretary of State may also provide financial assistance in the form of grants, loans, guarantees or indemnities, or through shares or securities. All costs will be subject to commercial negotiations, the content of which is confidential. Provision for these costs was agreed in the Autumn Statement 2021.

814 The Bill further provides for Ofgem, as heat network regulator, to collect fees from gas and electricity licensees for the purposes of covering expenses incurred from regulation heat networks and expenses incurred by Citizens Advice as consumer advocacy body. It is estimated that the costs of regulating the heat network market would be approximately £6.5 million per year.

815 Once the UK accedes to the Convention on Supplementary Compensation for Nuclear Damage this will create a remote contingent liability of approximately £7.5 million in the event of a nuclear incident. There will be no increased burden of liabilities on nuclear operators.

Parliamentary approval for financial costs or for charges imposed

816 A money resolution and a ways and means resolution are required for the Bill. A money resolution is required where a Bill authorises new charges on the public revenue – broadly speaking, new expenditure. A ways and means resolution is required where a Bill authorises new charges on the people – broadly speaking, new taxation or other similar charges.

817 As is usual with Lords Bills requiring Commons financial resolutions, the final provision in the Bill is a technical privilege amendment, which is intended to be removed in committee after the financial resolutions are agreed to.

818 The Bill may give rise to expenditure in a number of ways. In particular:

a. The Bill is likely to result in expenditure of the Secretary of State, in making regulations governing the regulatory framework for Parts 1 and 2; in exercising functions under those Parts in relation to licences; in providing financial assistance in connection with carbon dioxide transportation and storage; in providing financial assistance to the Independent System Operator and Planner; in creating the regulatory framework for heat networks; and in exercising powers for the purpose of securing core fuel sector resilience. The application of sections 165 to 167 of the Energy Act

2004, in the context of the special administration regime for which Chapter 4 of Part 1 provides, may also result in expenditure of the Secretary of State through the making of grants and loans and the giving of indemnities and guarantees. Part 10 (Energy Saving Opportunities Scheme-ESOS) enables the Secretary of State to provide financial assistance, through grants, loans, guarantees, indemnities or other kinds of financial assistance to an ESOS scheme administrator or to scheme participants.

b. Ofgem is given a wide range of functions, including as the economic regulator under Part 1 and as the Regulator of Heat Networks under Part 7. These new functions are likely to result in new expenditure for Ofgem.

c. The Competition and Markets Authority may incur expenditure in relation to appeals against decisions of the economic regulator under Part 1.

819 A ways and means resolution is needed to cover, in particular:

a. payments required to be made by gas and electricity suppliers and gas shippers under Part 2, the costs of which those entities are likely to pass on to their customers;

b. charges that may be imposed on holders of gas or electricity licences in respect of costs relating to heat networks, under clause 172;

c. payments into the Consolidated Fund that are required to be made under various provisions of the Bill.

Compatibility with the European Convention on Human Rights

820 The Government considers that the Bill is compatible with the European Convention on Human Rights (ECHR). Accordingly, Grant Shapps, Secretary of State, has signed a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect. The ECHR rights which are considered to be relevant to the Bill are: Article 1 of Protocol 1 ("A1P1") (right to property) and Article 8 (right to respect for private and family life, home and correspondence.

Environment Act 2021: Section 20

821 Grant Shapps, Secretary of State, is of the view that the Bill as introduced into the House of Commons contains provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, a statement under that section has been made, in which [the Minister/Secretary of State will state that the Bill will not have the effect of reducing the level of protection provided for in existing environmental law.

Related documents

822 The following documents are relevant to the Bill and can be read at the stated locations:

- British Energy Security Strategy, https://www.gov.uk/government/publications/british-energy-security-strategy/british-energy-security-strategy

- The Queen's Speech 2022: Background briefing notes, https://www.gov.uk/government/publications/queens-speech-2022-background-briefing-notes

- Energy white paper: Powering our net zero future, https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future

- The Ten Point Plan for a Green Industrial Revolution, https://www.gov.uk/government/publications/the-ten-point-plan-for-a-green-industrial-revolution.

Annex A – Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	**Extends to E & W and applies to Wales?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Scotland?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Northern Ireland?**	**Legislative Consent Motion process engaged?**
Part 1: Licensing of Carbon dioxide transport and storage							
Clauses 1 to 35 Schedule 1, 2, 3	Yes	Yes	In part	Yes	In part	Yes	In part
Clauses 36 to 38	Yes	Yes	No	Yes	No	Yes	No
Clauses 39 to 41	Yes	Yes	Yes	Yes	In part	Yes	Yes
Clauses 42 to 49	Yes	Yes	No	Yes	No	No	No
Clauses 50 to 52 Schedule 4	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clauses 53 to 55 Schedule 5	Yes	Yes	In part	Yes	In part	Yes	In part
Part 2: *Carbon dioxide capture, storage etc and Hydrogen production*							
Clauses 56 to 87	Yes	Yes	In part	Yes	In part	Yes	In part
Clauses 88 to 93	Yes	Yes	In part	Yes	In part	Yes	In part
Clauses 94 to 97	Yes	Yes	In part	Yes	No	Yes	In part
Clauses 98 to 101 Schedule 6	Yes	Yes	Yes	Yes	No	In part	No
Clauses 102 to 103	Yes	Yes	In part	Yes	In part	Yes	In part
Part 3: New Technology							
Clause 104 to 113	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clauses 114 to 115	Yes	Yes	No	Yes	No	No	No
Clause 116	Yes	Yes	No	Yes	Yes	Yes	No
Clause 117	Yes	Yes	No	Yes	No	Yes	Yes
Clause 118	Yes	Yes	No	Yes	No	Yes	No
Clauses 119 to 139 Schedule 7 to 9	Yes	Yes	No	Yes	No	No	No
Clauses 140 to 159 Schedule 10 to 12	Yes	Yes	No	Yes	No	No	No
Part 6: Market reform and consumer protection							

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	**Extends to E & W and applies to Wales?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Scotland?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Northern Ireland?**	**Legislative Consent Motion process engaged?**
Clause 160 Schedule 13	Yes	Yes	No	Yes	No	No	No
Clause 161 Schedule 13 to14	Yes	Yes	No	Yes	No	No	No
Clause 162 to 167 Schedule 15	Yes	Yes	No	Yes	No	No	No
Clause 168	Yes	Yes	No	Yes	No	No	No
Clause 169	Yes	Yes	No	Yes	Yes	No	No
Clause 170	Yes	Yes	No	Yes	No	No	No
Part 7: Heat Networks							
Clause 171	Yes	Yes	No	Yes	No	Yes	Yes
Clause 172	Yes	Yes	No	Yes	No	Yes	Yes
Clause 173	Yes	Yes	No	Yes	No	Yes	Yes
Clause 174 Schedule 16	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 175	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 176	Yes	Yes	No	Yes	No	Yes	Yes
Clause 177	No	No	No	Yes	Yes	No	No
Clause 178	No	No	No	Yes	Yes	No	No
Clause 179	Yes	Yes	No	Yes	No	Yes	Yes
Clause 180 to 191	Yes	No	No	No	No	No	No
Part 8 Energy Smart Appliances and Load Control							
Clause 192	Yes	Yes	No	Yes	No	No	No
Clause 193 to 198	Yes	Yes	No	Yes	No	No	No
Clause 199 to 203 Schedule 17	Yes	Yes	No	Yes	No	No	No
Part 9: Energy performance of premises							
Clause 204	Yes	In part	No	In part	No	In part	No
Clause 205 to 208	Yes	Yes	No	No	Yes	No	Yes
Part 10: Energy Savings Opportunity Scheme							
Clause 209 to 221	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Part 11: Core fuel sector resilience							

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	**Extends to E & W and applies to Wales?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Scotland?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Northern Ireland?**	**Legislative Consent Motion process engaged?**
Clause 222 to 244 Schedule 18	Yes	Yes	No	Yes	No	Yes	Yes
Part 12: Offshore Wind Electricity Generation, Oil and Gas							
Clause 245	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 246	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 247	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 248	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 249	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 250	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 251	Yes	Yes	In part	Yes	In part	Yes	In part
Clause 252	Yes	Yes	In part	Yes	In part	Yes	No
Clause 253	Yes	Yes	In part	Yes	In part	Yes	No
Clauses 254 to 255 Schedule 19	Yes	Yes	No	Yes	No	In part	No
Clause 256	Yes	Yes	No	Yes	No	Yes	No
Clause 257	Yes	Yes	No	Yes	Yes	Yes	No
Clause 258	Yes	Yes	No	Yes	Yes	Yes	No
Clause 259 Schedule 20	Yes	Yes	No	Yes	Yes	Yes	No
Clause 260	Yes	Yes	No	Yes	No	In part	No
Clause 261	Yes	Yes	No	Yes	Yes	No	No
Clause 262	Yes	Yes	No	Yes	Yes	Yes	No
Clause 263	Yes	Yes	No	Yes	No	No	No
Clauses 264 to 269	Yes	Yes	No	Yes	No	Yes	No
Part 14: General							
Clause 270	Yes	Yes	No	Yes	No	No	No
Clause 271	Yes	Yes	No	Yes	No	No	No
Clause 272	Yes	Yes	No	Yes	No	No	No
Clause 273	Yes	Yes	No	Yes	No	No	No
Clause 274	Yes	Yes	No	Yes	No	Yes	No
Clause 275	Yes	Yes	No	Yes	No	Yes	No
Clause 276	Yes	Yes	No	Yes	No	Yes	No

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	**Extends to E & W and applies to Wales?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Scotland?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Northern Ireland?**	**Legislative Consent Motion process engaged?**
Clause 277	Yes	Yes	No	Yes	No	Yes	No
Clause 278	Yes	Yes	No	Yes	No	Yes	No
Clause 279	Yes	Yes	No	Yes	No	Yes	No

ENERGY BILL [HL]

EXPLANATORY NOTES

These Explanatory Notes relate to the Energy Bill as brought from the House of Lords on 25th April 2023 (Bill 295).

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