HM Government

Draft Energy Bill

May 2012

Draft Energy Bill

Presented to Parliament

by the Secretary of State for Energy and Climate Change

by Command of Her Majesty

May 2012

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Contents

Secretary of State's Foreword

The Government's energy and climate change goals are to deliver secure energy on the way to a low carbon energy future and drive ambitious action on climate change at home and abroad. Failure to address these issues would have dramatic consequences for the nation and blackouts could became a feature of daily life. Failure to decarbonise globally would be catastrophic with dire consequences for the planet. Yet as we tackle these challenges, it is essential to minimise the cost to the economy, to consumer bills and to taxpayers, so we achieve these goals efficiently.

A secure and reliable energy supply is vital to our economic and social wellbeing. Whether it's in our homes or businesses, we use energy in almost every part of our lives. Existing energy markets and regulatory frameworks have delivered reliable and affordable energy, but they must be fit for purpose for the significant challenges ahead.

Over the next decade, around a fifth of existing power plants are due to close, against a background of projected increased energy demand and increasing energy prices. This presents a major investment challenge – with an estimated £110 billion needed in electricity generation and transmission this decade alone. So we need electricity market reforms to incentivise this investment efficiently.

However we also need an investment surge in electricity generation over the next decade and beyond for our climate change goals. There is a legal and moral imperative for the UK to cut significantly our carbon emissions and to be a world leader in the climate change challenge. So we must decarbonise Britain's electricity generation, to meet our Carbon Budgets as we transition to a low carbon economy.

The three families of low carbon electricity generation - Renewables, Fossil Fuels abated by Carbon Capture and Storage (CCS) and new Nuclear - could all play a

role in our future energy mix, even though they each present their own challenges and have their own uncertainties. Yet our existing electricity market makes it more difficult for such low carbon technologies to develop and deploy, because they all have much higher upfront capital costs than unabated fossil fuel competitors like gas. Raising the carbon floor price will help but by itself will be insufficient. We need electricity market reform to reduce the risk and cost of capital for all these low carbon technologies.

Yet as we all focus on the UK's wider economy, this investment challenge for energy infrastructure, due to security and climate change, is a historic growth opportunity.

Electricity market reform is indeed a key part of this Government's growth strategy, as it offers the prospect of investment and jobs. The United Kingdom is already establishing itself as a hub for renewables expertise, attracting investment from around the globe into our world beating offshore wind industry. With our competition announced this April, we are leading the way for a new UK Carbon Capture and Storage Industry. This industry alone could be worth £6.5 billion a year to the UK by late in the next decade as we export UK expertise and products. With our challenge to the nuclear industry to build a new generation of reactors without public subsidy, there is a prospect of significant jobs in the supply chain.

The challenge is to move from where we are now, to where we want to be by the middle of the next decade. Our reforms are ambitious and far-reaching and cannot be done in a "big bang". Yet we need to give investors the strongest possible signals now, locking into law the transparency, predictability and stability they seek.

So we are proposing a phased approach, and one that recognises gas generation will continue to play a critical role, in the short and medium terms, as a reliable and flexible electricity source to meet core demands now and balance demands in the future. So alongside the draft Energy Bill, we are publishing an Electricity Market Reform Policy Overview document to explain our phased reforms, including our thinking on capacity markets, looking forward to strategies on energy security and gas to be published in the Autumn.

I commend this Bill for pre-legislative scrutiny by the Energy and Climate Change Committee. I believe the Committee shares the Government's determination to move forward and I welcome the valuable role it can play in shaping our final proposals. I urge all interested parties to share their views with the Committee. I look forward to reviewing its report and the Government will respond to recommendations it makes.

Rt. Hon Edward Davey

Secretary of State

Department of Energy and Climate Change

May 2012

Section 1: Summary

Introduction

1. Energy is essential in almost every aspect of our lives and is fundamental to the success of our economy. The Annual Energy Statement, published in November 2011, set out the Government's plan to support the transition to a secure, safe, affordable and low-carbon energy system, and mobilise commitment to ambitious action on climate change, internationally.

2. The Government is committed to achieving its climate change and renewables targets, including a 34 per cent reduction in its CO_2 emissions by 2020 (relative to 1990); at least an 80 per cent reduction by 2050; and ensuring that by 2020, 15 per cent of the energy consumed in the United Kingdom comes from renewable sources.

3. Moving to a secure, more efficient, low-carbon energy system in a cost-effective way is extremely challenging, but is achievable. It will require major investment in modern technologies: to renovate our buildings; to provide for the electrification of much of our heating, industry and transport; and to move to cleaner power generation. It will also require major changes in the way energy is used by individuals, by industry, and by the public sector.

4. Through this Energy Bill, the Government aims to further its objectives to meet the UK's decarbonisation and renewable targets, at least cost to consumers. The Government aims to ensure continued secure energy supplies whilst creating the right conditions for markets and private investment, through greater regulatory certainty and clarity. It will do this through its programme of Electricity Market Reform (EMR); through strengthening the regulatory framework by further clarifying the role of the regulator, Ofgem; and through establishing an Office for Nuclear Regulation (ONR). In addition, the Bill makes provisions ensuring developers of offshore generating stations can test and commission offshore transmission infrastructure to export power without committing a criminal offence, before transferring the infrastructure to an

offshore transmission owner. Finally, the Bill makes provisions for a measure to enable the sale of Ministry of Defence (MOD) held assets, which pump aviation fuel to United Kingdom and United States airbases as well as some civilian airports - the Government Pipeline and Storage System (GPSS).

Context

5. Electricity plays a part in almost every aspect of modern life and is vital to our economic and social wellbeing. Since privatisation in the 1990s, our competitive market and system of independent regulation has served us well, delivering reliable and affordable electricity. It is crucial for the UK's international competitiveness and economic development that this continues. However, we face a number of unprecedented challenges in the coming decades:

- **we must decarbonise electricity generation**: it is vital that we take action now to transform the UK permanently into a low-carbon economy and meet our 15 per cent renewable energy target by 2020 and our 80 per cent carbon reduction target by 2050. To put us on this latter trajectory, power sector emissions need to be largely decarbonised by the 2030s. Without reform, the electricity sector would have an emissions intensity in 2030 of over three times the level advised by the Climate Change Committee. Electricity Market Reform (EMR) will put in place the institutional and market arrangements to deliver the scale of change in the power sector needed to meet the UK's carbon budgets, including the recently-adopted fourth carbon budget;

- **security of supply is threatened as existing plant closes:** around a fifth of existing capacity is expected to close over the next decade and more intermittent (wind) and less flexible (nuclear) generation will be built to replace it. These changes to our market create an investment challenge, in particular for flexible plant, which will be needed during periods of peak demand or still days (i.e. when the wind doesn't blow), but which would operate less often than now and therefore have less certain revenues. This uncertainty could lead to underinvestment and, as a consequence, uncomfortably low levels of reliable capacity. If we don't act, a central

scenario we have modelled suggests that in some years we could see blackouts affecting up to 2.5 million homes.[1]

- **demand for electricity is likely to rise**: despite the improvements in household and non-domestic energy efficiency, which will be generated through the introduction of the Green Deal and the roll-out of Smart Meters across the country, overall demand for electricity may double by 2050 due to the expected expansion in the uses of electricity with the electrification of transport, heat and other carbon intensive sectors; and

- **electricity prices are expected to rise**: increases in fossil fuel costs and environmental policies are likely to lead to higher bills in the future, even without factoring in the huge investment needed in new infrastructure. The Government is committed to reducing the impact on consumers by making sure investment takes place in the most cost-effective way possible.

6. There is broad consensus that current market arrangements will not deliver the scale of long-term investment needed, at the required pace, to meet these challenges. Nor will they give consumers the best deal. This is in part because of the sheer scale of the investment required. Up to £110 billion investment in electricity generation and transmission is likely to be required by 2020, more than double the current rate of investment.

7. In order to implement our reforms we need to legislate. Not only do we need new powers in order to put the new mechanisms in place and make changes to the existing regime, but crucially by placing these reforms on a legal footing, we will provide the long term certainty that investors need.

Key elements of the Bill

8. The Energy Bill will implement the Electricity Market Reforms (EMR); clarify the role of the regulator, Ofgem; establish an Office for Nuclear Regulation (ONR); make changes to the offshore transmission regulatory framework; and make provisions for the potential sale of Government Pipeline and Storage System (GPSS). These are summarised below:

[1] DECC, Dec 2011, *Capacity Mechanism Impact Assessment*, p. 13: http://www.decc.gov.uk/en/content/cms/legislation/white_papers/emr_wp_2011/tech_update/tech_update.aspx

Electricity Market Reform (EMR)

9. In *Planning our electric future: A White Paper for secure, affordable and low-carbon electricity (July 2011)*[2]*,* the Government announced its intention to legislate for structural reforms to the energy market. This will ensure future electricity generation is affordable, secure, diverse and consistent with the UK's obligations to reduce carbon emissions and increase the use of renewables. Key elements of the reform package include:

    - the introduction of new long-term contracts (Feed-in Tariff with Contracts for Difference) to provide stable financial incentives to invest in all forms of low-carbon electricity generation. A contracts for difference approach has been chosen over a less cost-effective Premium Feed-in Tariff;

    - a capacity mechanism to ensure future security of electricity supply (the December 2011 Technical Update set out the decision to develop a Capacity Market mechanism[3]);

    - an Emissions Performance Standard (EPS) set at 450g CO_2/kWh to reinforce the requirement that no new coal-fired power stations are built without CCS, but also to ensure necessary short-term investment in gas can take place; and

    - a Carbon Price Floor to reduce investor uncertainty, putting a fair price on carbon and providing a stronger incentive to invest in low-carbon generation now. The Carbon Price Floor was legislated for through the Finance Act during 2011.

10. This package of reforms will create an enduring framework for future investment, and will secure our electricity supplies for the future.

Energy Strategy and Policy Statement

11. As set out in the *Ofgem Review Final Report (July 2011)*[4]*,* the Government intends to strengthen the current regulatory framework by bringing greater

[2] http://www.decc.gov.uk/en/content/cms/legislation/white_papers/emr_wp_2011/emr_wp_2011.aspx

[3] DECC, Dec 2011, *Planning Our Electric Future: A Technical Update*: http://www.decc.gov.uk/en/content/cms/legislation/white_papers/emr_wp_2011/tech_update/tech_update.aspx

[4] http://www.decc.gov.uk/en/content/cms/meeting_energy/markets/regulation/regulation.aspx

clarity and coherence to the roles of both Government and the regulator. To achieve this, the Government proposes to establish a new statutory 'Strategy and Policy Statement'.

12. The context in which the Gas and Electricity Markets Authority (GEMA), and its executive arm, Ofgem, works has changed significantly since economic regulation was established in the 1980s. The role of the regulator is now much more complex than originally envisaged, with an important contribution to make to Government's wider policy goals for the energy sector such as climate change objectives. One consequence of this expansion of Ofgem's role is that a lack of clarity over the respective roles of GEMA and Government is seen by some to have developed, which may cause regulatory uncertainty. There is therefore a need to clarify these roles and provide confidence that there is coherence between Government policy and regulation.

13. The new statutory Strategy and Policy Statement will set out the Government's strategic priorities for energy policy; describe the roles and responsibilities of Government, Ofgem, and possibly other relevant bodies; and define policy outcomes that Government considers Ofgem to have a particularly important role in delivering. Both the Secretary of State and Ofgem will have to act in the manner best calculated to further the delivery of these policy outcomes, subject to fulfilling the principal objective i.e. protecting the interests of existing and potential consumers.

Office for Nuclear Regulation (ONR)

14. In February 2011, the Government announced that it would create a new independent statutory body, the Office for Nuclear Regulation (ONR), to regulate the nuclear power industry. This signalled the Government's commitment to securing an appropriately resourced and responsive regulator for the future challenges of the nuclear sector. Pending legislation the ONR was set up as a non-statutory agency of the HSE on 1 April 2011.

15. As a statutory body, the ONR will retain the best of current practice whilst creating a modern independent regulator based on the better regulation principles of transparency, accountability, proportionality and consistency. The

ONR will build on its current strengths as a world-class regulator and will be better placed to respond quickly and flexibly to current and future regulatory challenges, while retaining its focus on the protection of people and society from the hazards of nuclear generation.

Offshore transmission

16. In 2010, the Government introduced additional flexibility in the regulatory regime for offshore electricity transmission by enabling offshore windfarm developers to build their own transmission infrastructure back to shore for the export of power. Developers need to test the conveyance of electricity over their transmission infrastructure, before transferring it to an Offshore Transmission Owner (OFTO). The Government intends to legislate to ensure that developers of offshore generating stations can test and commission the offshore infrastructure to export power without committing a criminal offence before transfer to an OFTO. Not making this technical amendment to the Electricity Act 1989 would act as a barrier to this infrastructure investment, and its associated contribution to growth, jobs and renewable energy targets.

Government Pipeline and Storage System (GPSS)

17. These provisions will allow the sale of a Ministry of Defence (MOD) held asset that supplies aviation fuel to MOD and US airbases in the UK, as well as civilian airports. The MOD has previously reviewed the pipeline and concluded that it does not need to be owned by the Government. Legislation is required to create a set of transferable rights necessary to operate the GPSS.

Section 2: Introduction

18. This document explains the context and rationale behind the draft Energy Bill and outlines the steps we are taking to ensure our energy needs are met. It sets out the main reasons why the UK Government considers that legislation is required and outlines the background to and the proposed contents of the Bill, summarising its key elements and how they are expected to work together.

19. In addition to the draft Bill itself, this document also includes the Explanatory Notes which provides an outline of the effect of each clause in the Bill.

20. Regulatory impact assessments (RIA) have been produced for all parts of the proposals. They are brought together into one Summary Impact Assessment, which is included within this document.

21. We welcome views on the content of the Bill and encourage interested parties to share their comments with the Energy and Climate Change Committee who will be reviewing the Bill and publishing a report before the Parliamentary summer recess.

Devolution

22. The UK Government values greatly the input, assistance and support from all the Devolved Administrations (DAs) in taking these reforms forward. We need to harness the great resources and technical expertise from across the whole of the United Kingdom in order to deliver the required new generation of secure low-carbon power. It is only by working together that we will be able to realise this potential.

23. We believe firmly that a consistent approach across the UK is important and the most effective way of attracting the investment we need. However, at the same time, this approach must respect the roles and responsibilities of the different administrations as determined by the devolution settlements. The UK Government has worked closely with each of the DAs to align policy approaches and agree the application of the provisions and respective roles under the proposals and will continue to do so as the draft Bill is taken forward.

24. The specific application of the Bill provisions are set out below.

- All provisions in the Bill extend to England.
- All provisions in the Bill apply to Wales (although there are no GPSS assets in Wales).
- All provisions in the Bill extend to Scotland.
- Subject to final approval by the NI Assembly, only the following provisions will extend to Northern Ireland:
  - Contracts for Difference (CfD) (Part 1, Chapter 1);
  - Investment Instruments (FID) (Part 1, Chapter 2);
  - Conflicts of Interest (Part 1, Chapter 4);
  - Contingency Arrangements (Part 1, Chapter 5);
  - Some aspects of the Renewables Transitional (Part 1, Chapter 6);
  - Emissions Performance Standard (Part 1, Chapter 7), and
  - Some aspects of Nuclear Regulation (Part 2).

25. The draft Bill does not cover extension of all of the above provisions. However, these will be extended for introduction of the Bill to Parliament, subject to NI Assembly approval.

Section 3: Key elements of the Bill

Electricity Market Reform (EMR)

Introduction

26. The combination of challenges facing energy and electricity policy is relatively new. Since electricity privatisation, the current electricity market has worked well, delivering reliable and affordable power. It has been adapted to meet individual new challenges, for example with Renewables Obligation Certificates to support the development and deployment of renewable technologies. Yet, as we have set out in the EMR White Paper[5] and Technical Update[6], the market adjusted with various policy add-ons will not deliver the huge investment necessary to provide the diverse portfolio we need for a variety of reasons:

- low carbon plant such as nuclear or offshore wind typically has very high upfront capital costs and very low ongoing costs, compared with unabated[7] fossil fuel plant such as gas;

- energy and low-carbon technologies are at very different stages of development;

- low carbon plant is price taking and more exposed to gas or carbon price volatility, compared with gas fired generation which tends to be the marginal, price setting plant, generally able to pass through any changes in gas or carbon prices to the electricity price;

- the cost of carbon is not fully reflected in the market price as it does not take into account the damage caused to the climate. This is what Lord Stern called the 'greatest market failure of all time'[8];

[5] EMR White Paper: Planning our electric future: a White Paper for secure, affordable and low-carbon electricity http://www.decc.gov.uk/en/content/cms/legislation/white_papers/emr_wp_2011/emr_wp_2011.aspx

[6] EMR Planning our electric future: Technical Update http://www.decc.gov.uk/en/content/cms/legislation/white_papers/emr_wp_2011/tech_update/tech_update.aspx

[7] A plant that is not adapted to reduce carbon emissions such as through Carbon Capture and Storage technology

- the carbon price is volatile and hard to predict - making long-term investment decisions more uncertain; and

- the market may not bring forward enough generation to meet demand at all times, as this would require very high electricity prices at times of high demand.

27. So, without reform to the electricity market we would increasingly rely on one type of generation, gas, which would leave us with less diversity, and with energy security and affordability implications as we would be more exposed to price volatility as well, as being less able to meet our climate change objectives.

28. Gas will nonetheless continue to play an important role in the electricity sector; providing vital flexibility to support increasing amounts of low carbon generation; continuing to meet a significant proportion of demand; and maintaining security of supply. Gas can provide reliable and flexible generation, helping to balance the system, and in the longer term providing flexible resource either operating as back up to meet some peak demand or with a wider operating pattern once fitted with CCS. DECC will publish a strategy on the role of gas in the electricity market in autumn 2012.

29. Equally, the intermittent nature of many renewable technologies; and the capital cost challenges of new nuclear and CCS-equipped plant at significant scale mean that building a market that leads to over-reliance on any single technology carries risks.

Objectives of Electricity Market Reform (EMR)

30. Electricity Market Reform will secure the investment needed to deliver a reliable diverse low carbon technology mix.

31. Government's long term vision is a market where low carbon generators compete fairly under a robust and stable carbon price. Given that many low carbon technologies are at different stages of development, this long term vision remains at least 10-15 years away.

[8] The Stern Review: The Economics of Climate Change. http://www.hm-treasury.gov.uk/sternreview_index.htm

32. Electricity Market Reform provides the process and mechanisms to enable us to make the long term transition to this vision. EMR will progress through four stages from the current market interventions to this long-term vision of low-carbon generation competing fairly on price.

Figure 1: The four stages of EMR

Stage 1 **To 2017**	**Stage 2** **2017 – 2020s**	**Stage 3** **2020s**	**Stage 4** **late 2020s/beyond**
Current arrangements (RO) alongside new Contracts for Difference with prices set administratively. Capacity auctions could be initiated depending on the security of supply outlook	Technologies mature (but at different rates) and some are able to enter competitive, technology-specific auctions. The Capacity Market could be fully operational if initiated.	All technologies have matured and move to technology-neutral auctions. Demand side response, and additional storage and interconnection, will play an increasingly large role in managing supply and demand	Technologies are mature enough and the carbon price is high and sustainable enough to allow all generators to compete without intervention
Capacity auctions run if needed			

33. The objectives for EMR align with the three key objectives across the energy sector:

    i. **Ensuring a secure electricity supply.** Market reform will deliver this through: providing a diverse range of energy sources, including renewables, nuclear, Carbon Capture and Storage (CCS) equipped plant, unabated gas

and demand-side approaches; and ensuring there is sufficient capacity to meet demand at all times to minimise the risk of blackouts.

ii. **Ensuring sufficient investment in sustainable low-carbon technologies** to put the UK on a path consistent with its 2020 renewables targets and longer-term target to reduce carbon emissions by at least 80 per cent of 1990 levels by 2050. Analysis published in the December 2011 Carbon Plan suggests that the most cost effective paths to deliver the 2050 target require the electricity sector to be largely decarbonised during the 2030s.

iii. **Maximising benefits and minimising costs** to the economy as a whole and to tax payers and consumers - maintaining affordable electricity bills while delivering the investment needed. EMR minimises costs compared to the current policy trajectory. In delivering more low carbon generation and maintaining security of supply, average household bills after the implementation of market reform are expected to be, on average, lower than what they would have been without EMR in place over the period up to 2030. A competitive and efficient electricity market will underpin delivery at least cost to consumers.

Government recognises the impact that policies have on electricity cost for energy intensive industries. The 2011 Autumn Statement included a £250 million package to shield British businesses from potentially costly environmental legislation. It also committed Government to explore options for reducing the impact of electricity costs arising as a result of electricity market reform policies, including the Feed-in Tariff with Contracts for Difference, on these industries, where this significantly impacts their competitiveness and subject to value for money and state aid considerations.

34. EMR needs ultimately to deliver on all these objectives. In terms of decarbonisation it will be important to ensure that the policy and its delivery are consistent with meeting longer-term targets, in particular a trajectory for electricity sector decarbonisation which is consistent with carbon budgets. We are considering how best to ensure this, including whether, how and when further targets might be necessary. Any such approach would need to take

account of the need for flexibility in how we meet our carbon budgets in order to minimise costs to the economy.

35. While considerable investment is needed in electricity supply, there are also significant opportunities to meet our goals through changes to electricity demand. Demand side response including that facilitated by smart metering and smart grids can help flatten the peaks in demand that are currently seen at particular times of day and year, and which will be particularly challenging as demand for electric heat and transport increase. EMR will support the development of demand-side response (DSR) through allowing the demand side to bid into capacity auctions (see below). The Green Deal[9] will support reductions in demand in the household sector. In addition we are currently reviewing the potential for incentivising further demand reduction in the electricity sector. This work will report over the summer, in time to fit with legislative timetables, should it be required.

36. The Government is putting in place the framework to incentivise the right level and kind of investment needed. The proposed market reforms are being developed to be robust to a range of future scenarios, such as developments in technology, future Government objectives, and changes in prices and demand.

[9] For more information on the Green Deal, please see - http://www.decc.gov.uk/en/content/cms/tackling/green_deal/green_deal.aspx

37. The draft Energy Bill makes provision for the EMR programme as follows:

Structure of Part 1 of the Draft Energy Bill – Electricity Market Reform

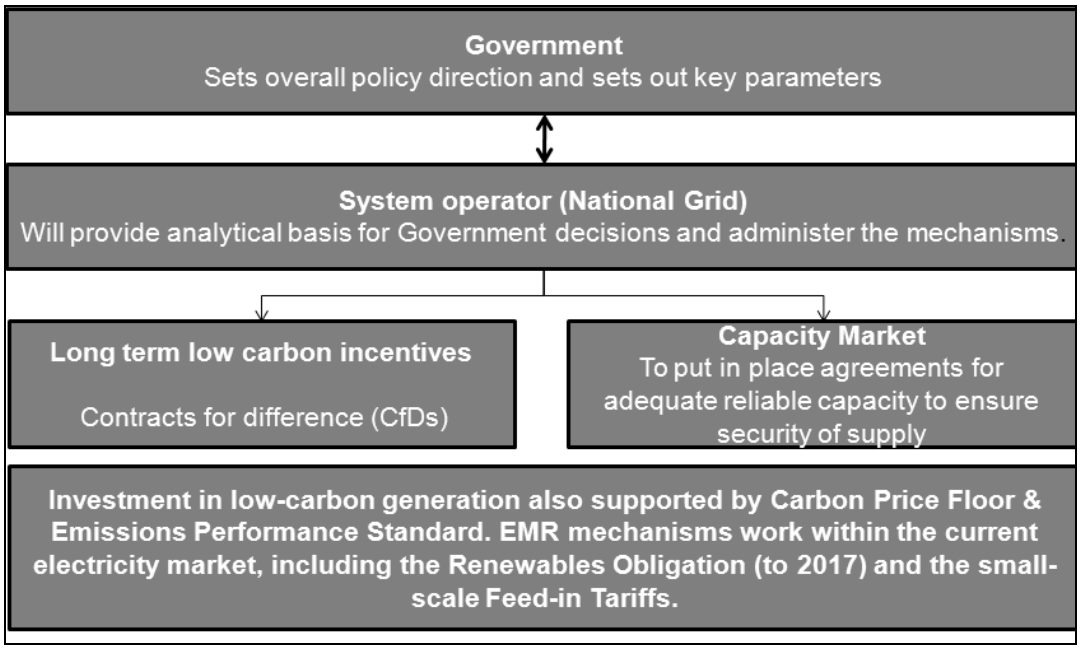
- Chapter 1 – Contracts for Difference
- Chapter 2 –Investment Instruments
- Chapter 3 – Capacity Mechanism
- Chapter 4 – Conflicts of Interest
- Chapter 5 – Contingency Arrangements
- Chapter 6 – Renewables Obligation: Transitional Arrangements
- Chapter 7 – Emissions Performance Standard
- Chapter 8 – Strategy and Policy Statement

How Electricity Market Reform will work

38. Figure 2 shows at a high level how the EMR mechanisms will be directed and administered. These mechanisms will work within the current electricity market, including Ofgem's role as energy regulator, the current Renewables Obligation (until 2017), and the current small-scale Feed-in Tariffs scheme.

39. The Government will set the overall policy for EMR (including setting key parameters for capacity auctions, price setting for low carbon during the first phase, and key parameters for low-carbon auctions in the later phases), informed by evidence and analysis from the System Operator (National Grid).

Figure 2: How the market reform instruments will be administered:



40. The System Operator will administer two new market mechanisms which will be played into the existing wholesale market:

- *Feed-in Tariff with Contracts for Difference (CfD)* – long-term contracts which provide revenue certainty to investors in low-carbon generation such as renewables, nuclear and CCS-equipped plant.

- *Capacity agreements (within a Capacity Market)* – payments for reliable capacity to be available when needed, helping to ensure security of supply.

41. These mechanisms will be supported by:

- *The Carbon Price Floor* – a tax to underpin the carbon price in the Emissions Trading Scheme; and

- *An Emissions Performance Standard* – a regulatory measure which provides a back-stop to limit emissions from unabated power stations.

Further information on the Electricity Market Reforms can be found on the Department of Energy and Climate Change website – www.decc.gov.uk.

EMR Institutional Framework and the role of Government

42. A robust, transparent and credible institutional framework is crucial to the success of EMR, and is important to provide investors with the confidence they need to invest. The Government, the System Operator and Ofgem will have clear and distinct roles to ensure effective delivery of EMR:

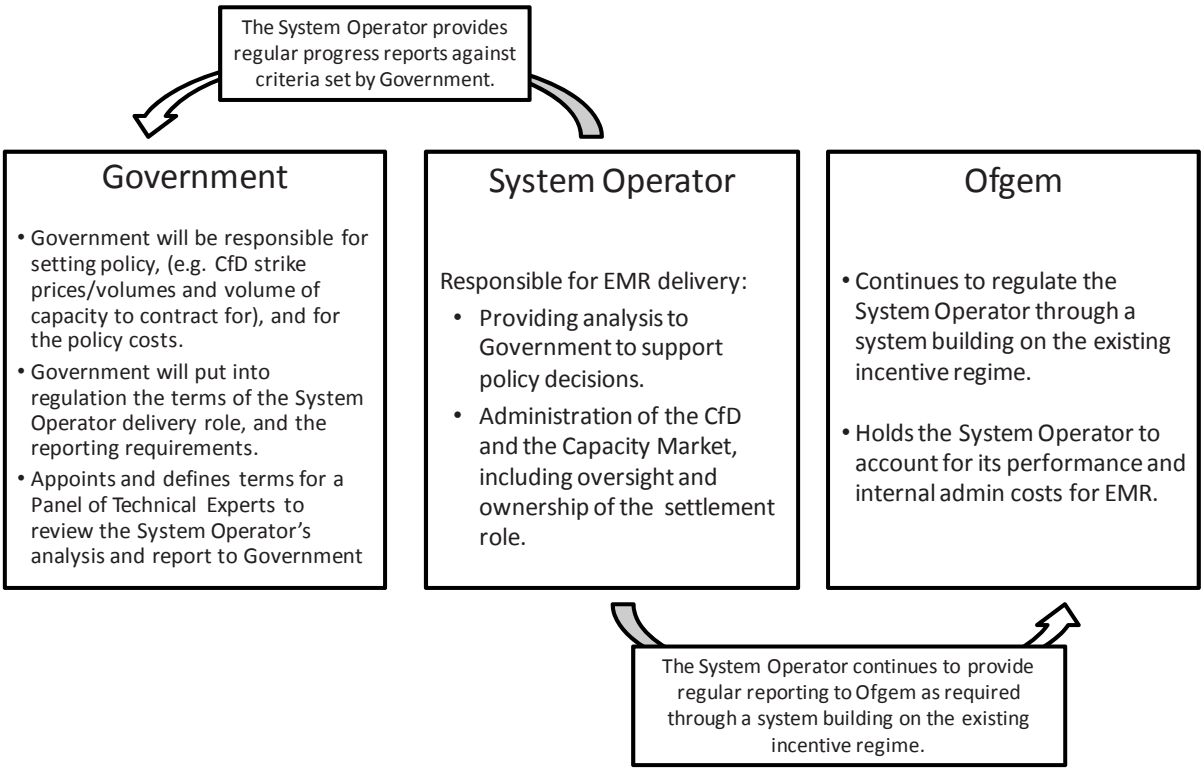
- **Government** will retain control of the policy approach and decisions; such as the CfD strike prices during administrative price-setting, and then auction volumes during competitive price setting; as well as any security of electricity supply objective and the volume of capacity to contract for the Capacity Market (these mechanisms are explained in more detail later in this document). Government will also be responsible for defining the terms of the System Operator's delivery role.

- **The System Operator** will provide evidence and analysis to inform Government's decisions. The System Operator will also administer the CfD and the Capacity Market and report to the Government on delivery.

- **Ofgem** will regulate the System Operator and oversee its performance in delivering the CfD and Capacity Market, to ensure value for money and incentivise effective performance. Government proposes that the System Operator recovers its administrative costs through a system which builds on the existing incentive regime.

43. Further details on the respective roles and responsibilities of the Government, the System Operator and Ofgem will be set out later in the Autumn and in secondary legislation in 2013-14. The further definition of the roles will take into account the joint work by DECC and Ofgem to assess synergies and any potential conflicts of interest for the System Operator in delivering EMR policies and to devise any necessary mitigations.

Figure 3 : An overview of the roles and responsibilities within the Institutional Framework.



44. Before making key policy decisions, the UK Government will consult with and involve the Devolved Administrations, ensuring respect of each Devolution settlement.

45. The Government will appoint a 'Panel of technical experts' to scrutinise the System Operator's analysis to ensure that it uses the most up to date and objective evidence. The panel's role will not include commenting on the Government's objectives or policy. The Government will also work with other bodies, such as Ofgem and the Committee on Climate Change, prior to making these policy decisions. The Government supports a role for the Committee on Climate Change as early in the process as appropriate to ensure that decarbonisation is properly considered.

46. Every five years the Government will publish a delivery plan to provide: certainty and clarity on its long-term objectives;

    - an outline of key policy decisions to support the effective delivery of the mechanisms;

- supporting analysis including the impacts of policy decisions on Government objectives; and

- illustrative scenarios for meeting those objectives.

47. The first delivery plan will be published in 2013. More information will be published later in 2012.

48. There are valuable synergies from the System Operator taking on the EMR delivery role. However, there is potential for conflicts of interest to arise with the System Operator's existing roles in the energy market, for example as owner of the electricity transmission network in England and Wales, and its other commercial interests. DECC is working with Ofgem to assess any conflicts of interest and propose mitigating measures if they are shown to be necessary. This work will report at the end of 2012.

49. Without pre-judging the result of this work, through the draft Energy Bill the Government is seeking powers to ensure that an adequate range of mitigating measures are available. The Bill also contains contingency arrangements and powers to transfer the delivery functions to another delivery body, should this be necessary.

The Draft Energy Bill includes:

- powers for the System Operator to administer FiT CfD and Capacity Market mechanisms;

- reserve powers to deal with potential conflicts of interest within National Grid, if needed; and

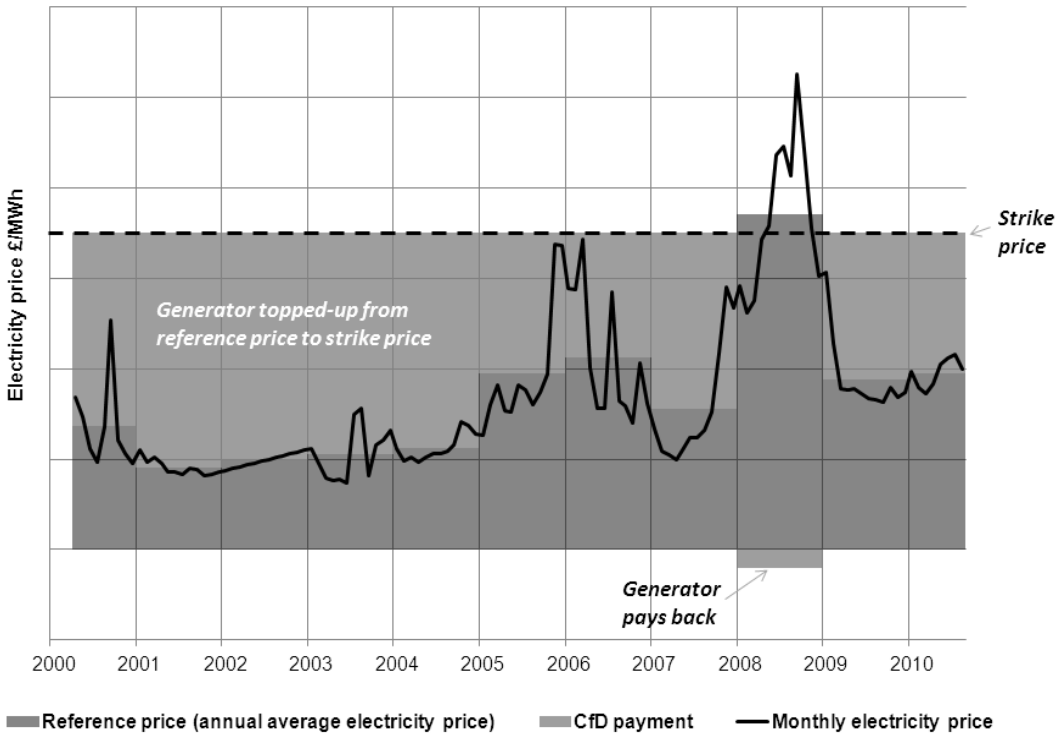
- contingency arrangements including powers to transfer delivery functions, if needed.

Contracts for Difference (CfD)

50. The Government set out in the EMR White Paper10 in July 2011 its decision to provide increased revenue certainty to low-carbon generation through use of a Feed-in Tariff following the structure of a Contract for Difference (CfD).

51. CfDs will facilitate investment in low carbon generation through removing long term exposure to electricity price volatility. CfDs stabilise returns for generators at a fixed level known as the strike price. Generators receive revenue from selling their electricity into the market as usual. In addition, when the market price is below the strike price they also receive a top-up payment from suppliers for the additional amount. Conversely if the market price is above the strike price, the generator must pay back the difference. Low carbon generators will remain active participants in the wholesale electricity market. The operation of the Feed-in Tariff with Contracts for Difference is outlined in Figure 4.

Figure 4: Illustration of the operation of the Feed-in Tariff with Contracts for Difference



[10] Planning our electric future: a White Paper for secure, affordable and low-carbon electricity - http://www.decc.gov.uk/en/content/cms/legislation/white_papers/emr_wp_2011/emr_wp_2011.aspx

52. The EMR White Paper set out our rationale for choosing CfDs as the mechanism to support low-carbon generation. CfDs improve long-term revenue certainty, lowering the cost of capital for low-carbon generators, they retain short-term market signals for efficient operation of low-carbon plant, and as a result, they are more cost effective than other options for support, reducing the cost to consumers.

53. In principle, the CfD will be largely standardised across technologies. This will provide a stable basis for investment, and make it easier to compare costs of different technologies during the move to technology-neutral auctions in the longer term.

54. In the short term, however, variation in CfDs may be needed for some technologies – within intermittent (i.e. generation that is inherently variable and dependent on primary power sources outside the control of generators, e.g. wind, wave, and solar) and baseload (i.e. generation that generally operates continuously to serve the minimum electricity demand over a given period of time ("baseload")) classes – in recognition of their different risk profiles (for example early stage CCS projects, due to their demonstration status), to ensure they come forward at a reasonable cost. Any variations agreed will have to represent value for money and maintain a level playing field in line with our approach to securing state aid clearance.

55. The Government supports the principle of 'grandfathering' CfDs to provide investor certainty, so a CfD cannot be changed retrospectively once issued, other than under pre-agreed circumstances.

56. EMR will support moving to competitive processes such as tenders or auctions as early as 2017 for some technologies deploying after 2020.

57. The draft CfD Operational Framework published alongside this draft Bill sets out further detail on the operation of the CfD, for discussion with industry and other interested parties. This detail will largely be implemented through secondary legislation and changes to codes and licences, and will be confirmed in the autumn.

58. The CfD legal framework and payment model outlined in the draft operational framework and the draft Bill reflects Government's current preferred option. The Government recognises that industry has strong concerns about this model and has suggested alternatives. Using a single counterparty we are seriously considering these concerns and the alternatives and it is expected that there will be further detailed consideration given to these questions as part of the pre-legislative scrutiny process. A final decision on the framework and payment model will be made by the autumn.

59. It is Government's intention that CfDs are available to low carbon generators from 2014. To address the risk of a hiatus in investment in low carbon generation until such time as the CfD regime is fully implemented, we will work with developers who need to make early final investment decisions with a view to enabling such decisions to be taken in a timely manner where possible.

The Draft Energy Bill includes:

- powers for Ministers to establish CfD regulations, including provisions for:
  - eligibility,
  - CfD terms (such as duration), and
  - the level of low-carbon support provided through CfDs (the "strike prices");
- powers for the System Operator and Secretary of State to issue CfDs;
- powers to set maximum costs and targets relating to CfDs; and
- powers to make changes to license conditions to enable the System Operator to carry out its functions in relation to delivering CfDs.

Capacity Market

60. Ensuring security of electricity supply is a Government priority. This means ensuring that there is enough capacity in place to meet demand.

61. While there is no immediate threat to the security of electricity supply, there is a potential risk in the future as a large amount of plant is closed and energy sources, which are likely to be increasingly intermittent (e.g. wind) or inflexible

(e.g. nuclear) are brought onto the system. Low carbon plant has lower operating costs meaning fossil fuel plant such as gas will operate less often than now and be less certain of its revenues. This could lead to under-investment and uncomfortably low levels of reliable capacity.

62. The Government will therefore legislate to introduce a Capacity Market to provide an insurance policy to reduce the likelihood of future blackouts – for example, during periods of low wind and high demand – with the aim of ensuring that consumers continue to benefit from reliable electricity supplies at an affordable cost.

63. The proposed capacity mechanism, as set out in the December Technical Update, would work as follows:

- a forecast of future peak demand will be made;
- the total amount of capacity needed to ensure security of supply will be contracted through a competitive central auction a number of years ahead;
- providers of capacity successful in the auction will enter into capacity agreements, committing to provide electricity when needed in the delivery year (in return for a steady capacity payment) or face penalties;
- providers of capacity able to enter the auction will include existing providers and new providers, to incentivise extra investment now and in the future and to incentivise good repair and maintenance practices; and
- in the delivery year, providers will be paid for their capacity, and the costs shared between electricity suppliers.

64. The Capacity Market will provide support to generation and demand-side forms of capacity, such as demand-side response and storage.

65. The need for and timing of the first capacity auction will be decided by Ministers based on advice on the security of supply outlook and analysis provided by the

System Operator and possibly other technical experts (including Ofgem)[11]. The Capacity Market will only be run if it is needed. Analysis carried out by DECC[12] suggests that capacity margins will tighten significantly over the second half of this decade. Under some scenarios a shortfall might not arise until the next decade, however other credible scenarios suggest a problem could occur toward the middle of this decade. Given this uncertainty, the legal framework for the Capacity Market will be put in place as soon as possible and the first capacity auction could, if needed, be run by the System Operator as early as 2014 for capacity to be in place by 2015/16 if necessary.

66. Some stakeholders have raised the question of how energy and capacity payments will interact and suggested that we should consider whether we could integrate capacity and energy payments more effectively – possibly by using CfDs to ensure reliable capacity. DECC, and the System Operator, are looking closely at how the different mechanisms will interact and will ensure that the Capacity Market and the CfD work in an integrated and complementary manner to deliver our goals of ensuring security of supply, decarbonisation of the electricity system and minimising costs to the consumer.

67. DECC will publish emerging design choices on the issues most important to investors by the end of the year. We expect to have completed the design by March 2013 and will formally consult on the full detailed design later in 2013.

The Draft Energy Bill includes:

- powers for the Secretary of State to design and introduce a Capacity Market; and
- powers to confer functions on National Grid to enable delivery of the Capacity Market.

[11] As required by the Energy Act 2011, Ofgem will produce its first annual capacity assessment this September. It may be necessary to make some amendments to these statutory reporting requirements to ensure that reports in future years provide Ministers with the best possible information.

[12] DECC, Dec 2011, *Capacity Mechanism Impact Assessment*: http://www.decc.gov.uk/en/content/cms/legislation/white_papers/emr_wp_2011/tech_update/tech_update.aspx

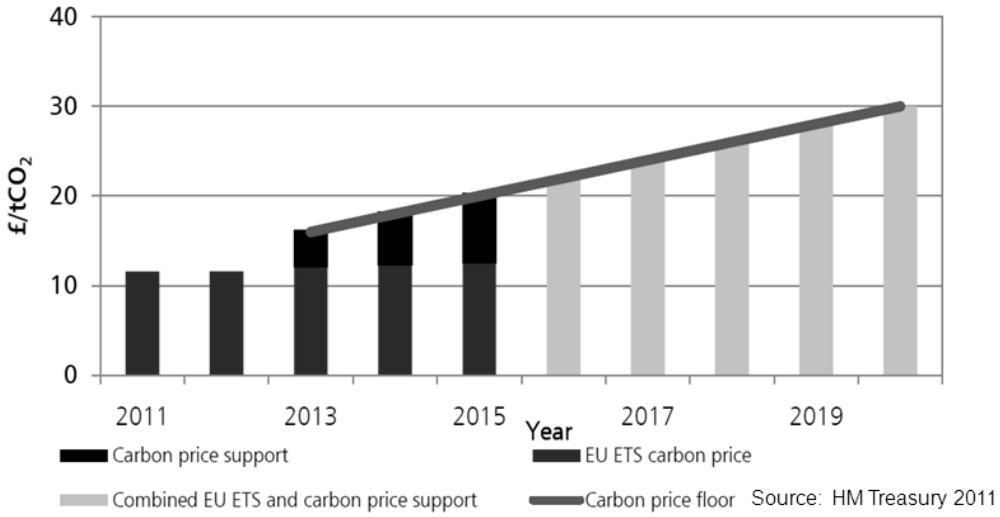
Supporting mechanisms

68. Underpinning these arrangements are other key elements that will drive investment in low-carbon power generation: the Carbon Price Floor; and the Emissions Performance Standard; as well as measures to improve market liquidity and consideration of how to ensure independent generators can find a route to market for their power. These are outlined in the following sections.

Carbon Price Floor

69. A Carbon Price Floor (CPF) will provide clear economic signals to move away from high carbon technologies, by increasing the price paid for emitting carbon dioxide.

Figure 5: Carbon Price Floor illustration (in real 2009 prices and calendar years)



70. By putting a price on carbon emissions, the Carbon Price Floor will provide long-term certainty about the cost of carbon. The Carbon Price Floor was legislated for through the Finance Act during 2011. It will be introduced from 2013 at around £15.70/tCO_2 and follows a straight line to £30/tCO_2 in 2020, rising to £70/tCO_2 in 2030 (real 2009 prices).

Emissions Performance Standard

71. An Emissions Performance Standard (EPS) will provide a regulatory back stop on the amount of emissions that a new fossil fuel power station can emit. This

will help deliver the Government's commitment to prevent coal-fired power stations being built unless they are equipped with CCS.

72. The EPS will initially be set at a level equivalent to 450g/kWh for all new fossil fuel plant, except those that form part of the UK's CCS Commercialisation programme or benefit from European funding for commercial scale CCS. This exemption will provide flexibility in order to support the development of CCS, and will be applied on a case-by-case basis.

73. The Government has recently announced that power stations consented under the 450g/kWh-based level would be subject to the level until 2045. This 'grandfathering' will provide long-term certainty to investors, particularly in relation to new gas generation that is needed to ensure security of supply.

Powers in the Draft Energy Bill includes:

- duty on power stations not to exceed annual CO_2 emissions limit;
- powers for the exemption for publicly funded CCS projects;
- powers to bring additional plant into the regime, specifically where an existing plant replaces a boiler or where a 'gasification' plant is associated with two or more generating stations; and
- powers for monitoring and enforcing the limit.

Ensuring Routes to Market

74. Independent generation developers often rely on longer-term contracts (Power Purchase Agreements or PPAs) to secure the finance they need. Developers have said that it has become increasingly difficult to attract offers of bankable PPAs. The Government believes that a competitive market should provide bankable routes to market for independent generation projects and wants to see a stronger, more competitive PPA market that can underpin investment.

75. Government want to ensure that the extent and nature of issues in the current market - and likely developments in the future PPA market - are fully understood and, if necessary will bring forward proposals to ensure that

independent developers have a viable route to market. The Department of Energy and Climate Change (DECC) will therefore continue to work with investors, independent generation developers, potential PPA providers and Ofgem and will publish a Call for Evidence, which will include initial options to address the issues in June 2012, in order to ensure that the evidence base is fully developed. The Call for Evidence will seek to understand any barriers to a competitive PPA market in the current arrangements and in the future when EMR measures are implemented. It will also set out and seek views on options to address the barriers. DECC will respond to the Call for Evidence in the autumn before the Energy Bill introduced to Parliament.

Wider Wholesale Market liquidity

76. A liquid market means that market participants are able to quickly and easily buy or sell power at a price that reflects supply and demand fundamentals. Liquidity is essential not only to promote a competitive market and bring down costs, but also to enable efficient functioning of EMR mechanisms.

77. Poor liquidity in the GB wholesale electricity market is an important barrier to entry to independent electricity generators and suppliers. Poor liquidity may distort investment and operational signals and prevent market participants from trading in order to effectively manage their risks. A liquid market is also important to ensure that CfD strike prices are established on the basis of an efficient competitive market and to provide robust reference prices.

78. There has been some positive progress in the last six months to address liquidity concerns. Industry-led initiatives have delivered significant improvements in day ahead trading. In addition, Ofgem is consulting on a proposal to require the large vertically integrated companies (‘Big 6’) to sell 25 per cent of their generation output in a range of key products in the forward market.

79. Whilst these steps are positive, the Government agrees with Ofgem that further industry commitments are necessary in addition to appropriate action from Ofgem to address poor liquidity, especially in the forward markets. DECC will continue to work with industry and Ofgem to ensure liquidity strengthens but will

act if necessary where barriers to entry are not addressed through these initiatives.

European context for Electricity Market Reform

80. The UK electricity sector faces similar challenges to the rest of the European Union. UK energy policy since the early 1990s has been based on developing liberalised markets, successfully using competition to drive down energy prices. This broad approach has been adopted across Europe, through the EU's Internal Energy Market Packages, resulting in more open, transparent and competitive markets. This has led to lower average prices and greater choice. Together with our European partners, however, the UK now faces a new challenge of increasing renewable generation and reducing greenhouse gas emissions, while maintaining security of supply and affordability of bills.

81. The UK supports the European Commission's approach to meeting these challenges through the development of the EU Target Model (to enable the realisation of a single electricity market by progressively coupling adjacent markets, with a vision for integrated EU electricity markets by 2014). The UK welcomes the efficiencies that further links with European electricity markets through market coupling by means of day-ahead power exchanges will bring (the Commission envisages that coupling across interconnectors will occur through implicit auctions in which buyers and sellers in each market can bid into the other).

82. In addition to the expected benefits of coupling by means of day-ahead auctions, further EU initiatives to support electricity trading in forward, within-day and balancing markets align well with Ofgem and DECC initiatives on market reform. Emerging EU network codes (under development through the EU Energy regulatory authorities group ACER and the EU transmission system operation group ENTSO-E) on capacity allocation and congestion management will inform EMR detailed design work and we are confident that both the CfD and Capacity Market will be robust to expected outcomes.

83. DECC are working closely with the Commission on the interaction of EMR with the wider EU context, and to ensure EMR policies are consistent with European

legislation, subject among other things to the necessary powers being included in the legislation and any necessary state aid decisions being made.

The Move to EMR

84. Government's long-term vision for the electricity market is for low-carbon technologies to compete fairly on price, and EMR will provide the transition to get to this vision. In the short term, a transition is needed to move from existing instruments to the EMR mechanisms. The aim is to ensure a smooth transition for investors and to avoid any hiatus in investment as a result of EMR.

Transition from the Renewables Obligation

85. We have set out in detail in the EMR White Paper and the Technical Update how the move from the current Renewables Obligation (RO) to the CfD will work for renewable generators.

86. The phased changeover arrangements from the RO to the new support mechanism aim to prevent a hiatus in renewables investment while the new arrangements are being put in place. The RO will remain open to new generation until 31 March 2017, allowing new renewable generation that comes online between 2014 (when CfDs start) and 2017 to choose between the CfD and the RO.

87. After this point, the RO will be closed to new generation and 'vintaged' (levels and length of support for existing participants will be maintained). All generation accredited under the RO will receive its full 20 years of support. DECC have set out some limited flexibility around the 2017 closure date for those projects that are delayed for reasons outside their control, such as delays in grid connection or planned radar installation.

88. With the proposed closure of the Renewables Obligation (RO) to new generation from April 2017, to provide confidence in the income under the final years of the scheme, the draft Bill provides powers to enable the fixing of the price of RO certificates issued under the scheme from 2027 to 2037.

Enabling final investment decisions required in advance of implementation of CfDs

89. The Government recognises that the changes to the market proposed under EMR could lead to some investment decisions being delayed and is committed to working with relevant developers to enable early investment decisions, including those required ahead of EMR implementation, to progress to timetable wherever possible. The Final Investment Decision (FID) Enabling Project has been established to take forward this work.

90. Among the options available to the Government to give comfort to developers is the option for the Secretary of State to issue investment instruments (which will be broadly similar to CfDs) on terms and conditions that he considers appropriate in advance of the implementation of CfDs (subject, amongst other things, to securing the necessary powers and any necessary state aid clearance).

91. The actual form and detail of comfort that might be offered in relation to projects will depend on the projects that come forward for the FID Enabling process and the outcome of any engagement with relevant investors and developers.

92. A number of developers (including new nuclear and early stage CCS developers) have expressed interest in the FID Enabling process to date and it is possible that other developers may also do so. The Technical Update to the EMR White Paper sets out the characteristics which we expect projects that come forward for engagement in the FID process to exhibit.

Implementation of CFDs

93. DECC is publishing a draft CfD operational framework alongside this document, and in the autumn we will publish the final operational framework, which will include a firm decision on the CfD design and will give developers visibility on the CfD terms.

94. Government intends to consult on the underpinning data for the first set of CfD strike prices for renewables as part of the draft delivery plan in 2013 and will announce prices in the second half of that year when we publish the 2014-2018

delivery plan, giving developers up to a year of visibility of prices ahead of them coming into force in mid 2014.

The Draft Energy Bill includes:

- powers to transition existing RO support from 2027 into a certificate purchase scheme; and
- powers for the Secretary of State to issue investment instruments in advance of the implementation of CfDs.

Energy Strategy and Policy Statement

Introduction

95. The Bill introduces a new statutory document - a Strategy and Policy Statement - that will set out the Government's strategic priorities for energy policy; describe the roles and responsibilities of Government, Ofgem, and potentially other relevant bodies; and define policy outcomes that Government considers Ofgem to have a particularly important role in delivering. Both the Secretary of State and Ofgem will have to act in the manner best calculated to further the delivery of these policy outcomes, subject to fulfilling the principal objective.

Background

96. In April 2011, the Government reaffirmed its commitment to independent economic regulation across the infrastructure sectors in its *Principles for Economic Regulation*. This set out the importance of stable and predictable regulatory frameworks for investment and growth across the infrastructure sectors, and committed to introduce strategy and policy statements for each of the regulated sectors to provide context and guidance about priorities and desired outcomes[13].

97. In the Ofgem Review Final Report, July 2011[14], the Government confirmed that it intended to strengthen the existing regulatory framework for energy – where the independence of the regulator is enshrined in EU law - by bringing greater clarity and coherence to the roles of both Government and the regulator; the Gas and Electricity Markets Authority (GEMA), and its executive arm, Ofgem (both referred to here as 'Ofgem'). To achieve this, the Government proposed to establish a new statutory Strategy and Policy Statement.

98. The Review's conclusion and proposals responded to significant changes that have occurred in the context in which Ofgem works since economic regulation was established in the 1980s. The role of the regulator is now much more

[13] http://www.bis.gov.uk/policies/better-regulation/improving-regulatory-delivery/principles-for-economic-regulation

[14] http://www.decc.gov.uk/en/content/cms/meeting_energy/markets/regulation/regulation.aspx

complex than originally envisaged, with an important contribution to make to Government's policy goals for the energy sector, for example energy security or climate change objectives.

99. The Review concluded that:

- a lack of clarity over respective roles has developed which may cause regulatory uncertainty;
- Government should set a clearer strategic direction; and
- there is a need for greater transparency as to how Ofgem's independent regulatory decisions should be aligned with this direction.

100. The Strategy and Policy Statement is designed to clarify the existing regulatory framework and to increase regulatory certainty by requiring Government to be clearer about its strategic policy framework. The intention is that the Statement will normally be in place for the life of a Parliament, with a requirement to review it every five years. The Statement will not change the Authority's principal objective of protecting the interests of existing and potential consumers, but will require the Secretary of State and the Authority to carry out their regulatory functions in a manner best calculated to further the delivery of the policy outcomes, subject to the application of the 'principal objective duty'. The statement replaces the existing Social and Environmental Guidance, which will be repealed.

The Strategy and Policy Statement

101. The Strategy and Policy Statement will include three sections on: strategic priorities, policy outcomes, and roles and responsibilities. The proposed intention and detail of each section is described below.

Strategic priorities

102. The Strategy and Policy Statement will provide a clear, high-level description of Government's strategic priorities in formulating energy policy. To put Government's key policy outcomes (against which Ofgem will have to report) in perspective it will be important to describe Government's strategic policy and

goals for the gas and electricity markets. This description will be high-level, given that it is planned for the Statement to be in force for a full Parliament (around five years).

103. The Statement will only reflect existing policy. It is not intended that this section be used as the main vehicle for publishing any new policy. The process of producing the Statement may identify policy 'gaps', but it is expected that solutions for filling those 'gaps' would be announced prior to the publication of the Statement through a different policy document.

104. The strategic priorities will describe the Government's direction of travel and Ofgem will be required to have regard to these when making its regulatory decisions where section 4AA of the Gas Act 1986 and section 3A of the Electricity Act 1989 apply.

Policy outcomes

105. The Statement will define clear policy outcomes that Ofgem has a particularly important role in delivering, and against which Ofgem will be required to justify its independent regulatory decisions.

106. To help provide a clear line of sight between Government's strategic objectives and the regulator's decisions the intention is that the Statement will include a limited number of short 'policy outcomes' that result from high-level strategic trade-offs that Government has made. The outcomes will have greater legal force than the other sections of the Statement.

107. The Secretary of State will set the outcomes in the manner best calculated to further the principal objective, which is to protect the interests of existing and future consumers. This will ensure alignment between energy policy outcomes and the existing statutory framework. Ofgem (and the Secretary of State) will be required to act in the manner best calculated to further the delivery of the policy outcomes, subject to fulfilling the principal objective.

108. It is anticipated that the outcomes will only express existing government policy. An outcome could be qualitative or quantitative, and the type of outcome will vary depending on the strategic policy context; for example it may express a

broad policy goal, or identify specific issues or barriers, or a quantitative deliverable. To illustrate this, a possible outcome for the Government's low carbon policy goals that reflects trade-offs with other areas of policy might be 'To meet the UK carbon budgets in successive five year periods from 2008, and cut greenhouse gas emissions by at least 80 per cent below 1990 levels by 2050'. A possible outcome for renewable policy might be 'To achieve 15 per cent renewable energy by 2020'.

109. Any outcome will be achievable in a number of ways and Ofgem may not hold all the levers. In this case, it would not, on its own, be expected to ensure successful delivery. We anticipate that most outcomes will fall into this group. Therefore, it will be necessary for Ofgem to define and, if possible, quantify its role and contribution as clearly as possible.

110. Where relevant it will be for the regulator to decide how to achieve an outcome having regard to any strategic priorities in the Statement and the duties in section 3A Electricity Act 1989 and section 4AA Gas Act 1986. Where several outcomes have to be achieved, again it will be for the regulator to decide how to achieve them.

111. Outcomes may be at a level of detail below the existing duties, but they will not provide an explicit direction and so will not prevent Ofgem, as independent regulator, from adopting what they consider to be the most appropriate approach.

112. The outcomes do not need to be comprehensive across all of Ofgem's interests, and are unlikely to be so if, as intended, there are only a small number of outcomes. Where regulatory decisions are not affected by outcomes, the arrangements should work as they do now with the regulator considering how to protect the interests of current and future consumers, in accordance with the existing statutory framework.

Roles and responsibilities

113. The Statement will provide a short, high-level description of the roles of Government, the regulator and, potentially, other key organisations in the energy market, with a focus on how Government's energy strategy will be

delivered. The objective is to be clear as to who does what under the existing arrangements.

114. The main concern from the Ofgem Review Call for Evidence was that the responsibilities of the Government and the regulator had become blurred over recent years and needed clarifying. The Ofgem Review concluded that it would be useful to include a high-level description of the roles and responsibilities of Government and Ofgem in the Strategy and Policy Statement, reflecting the five-year lifespan of the document. This description could also include any other organisations in the energy market that are key to the Government meeting its strategic objectives and that the Secretary of State considers appropriate to mention.

115. The 'roles and responsibilities' section will not set out new arrangements or announce changes to existing arrangements for regulating the energy sector.

Need for legislation

116. Legislation is needed to strengthen the existing regulatory framework. This reflects Parliament's responsibilities in holding the regulator to account. The establishment of the Statement, as well as any subsequent revisions, will be subject to parliamentary approval through affirmative resolution procedure. This will require Parliament to debate and approve the Statement before it can come into force. The Bill will also require Ofgem to report formally in their forward work plan on their plans to meet the policy outcomes set out in the Statement.

The Draft Energy Bill includes:

- a power to designate a Strategy and Policy Statement;
- a duty to review a Strategy and Policy Statement every five years;
- a power to review it before the end of five years in certain circumstances, for example, following a Parliamentary election;
- duties on the Secretary of State and Ofgem in relation to the content of a Strategy and Policy Statement, for example, Ofgem to have regard to the strategic priorities section; and
- reporting requirements on Ofgem related to a Strategy and Policy Statement.

Office for Nuclear Regulation (ONR)

Introduction

117. The provisions in the draft Energy Bill will consolidate the current nuclear regulator, the Office for Nuclear Regulation (ONR), onto a statutory footing. The intention to create the ONR as a statutory body was announced by the Government in February 2011[15]. Pending legislation, the ONR was established as an agency of the Health and Safety Executive (HSE) in April 2011.

118. As a statutory body, the ONR will retain the best of current practice, whilst creating a modern regulator, based on the better regulation principles of transparency, accountability, proportionality and consistency. The ONR will build on its current strengths as a world-class regulator. The legislation will ensure that the ONR will be better placed to respond quickly and flexibly to current and future regulatory challenges while retaining its focus on the protection of people and society from the hazards of the nuclear industry.

Background

119. Creating the ONR as a statutory body will complete the work that began in 2007 to consolidate the nuclear regulatory framework, improve the consistency of regulation, and reduce interfaces for duty holders. During that time the operations of the Office for Civil Nuclear Security (OCNS) and the UK Safeguards Office (UKSO) were transferred from the then Department for Trade and Industry to sit alongside the Nuclear Installations Inspectorate in the HSE's then Nuclear Directorate. In October 2011, regulation of the transport of radioactive materials by road, rail and inland waterway was transferred to the ONR from the Department for Transport.

120. For the first time these key strands of nuclear regulation were brought together to be managed by one organisation. However, under current legislation the Secretary of State (for Energy and Climate Change) retains overall responsibility for those functions, with the HSE performing the regulatory functions on behalf of the Secretary of State under a series of agreements,

[15] http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110208/wmstext/110208m0001.htm#11020828000008

without having overall legal responsibility for the performance of those functions.

121. By creating the ONR as a statutory body, the Government seeks to consolidate, clarify and streamline the existing arrangements. As a result, there will be a more transparent statutory arrangement with clearer accountability, under which the ONR will have legal responsibility for these core, and other, functions.

122. The importance of a nuclear regulator being transparent and independent is emphasised in the Chief Nuclear Inspector's report on the circumstances of the Fukushima accident published in October 2011[16], which supports the Government's rationale for creating a statutory nuclear regulator. The report recommends that the Government should consider ensuring that the legislation creates an organisation which is open and transparent about its decision making, so that it may clearly demonstrate to stakeholders its effective independence from bodies or organisations concerned with the promotion or utilisation of nuclear energy.

123. The Energy Bill will set out a clear governance model for the statutory ONR, giving it responsibility for five key areas: nuclear safety; nuclear security; nuclear safeguards; the transport of radioactive material by road, rail and inland waterway; and health and safety on nuclear sites. This will enhance the effectiveness of the civil nuclear security regime. The ONR will play a key role in addressing some of the top risks outlined in the National Security Strategy[17] which are directly relevant to the sector.

124. The Energy Bill will also ensure that the ONR has the financial and organisational flexibility required to meet its business needs on a sustainable

[16] *Japanese earthquake and tsunami: Implications for the UK nuclear industry* web link: www.hse.gov.uk/nuclear/fukushima/final-report.pdf

[17] http://www.cabinetoffice.gov.uk/resource-library/national-security-strategy-strong-britain-age-uncertainty

basis. This is one of the key recommendations made by Dr Tim Stone in his review of nuclear regulation in the UK[18].

125. Declining interest in the UK's nuclear industry over the last few decades has meant a shortfall in the number of trained nuclear inspectors which, along with an increasingly competitive global skills market, has serious implications for the ONR's specialist staffing levels. The recruitment and retention of nuclear regulators will be crucial in meeting the forecast demand from the new nuclear build programme in the UK. The Energy Bill will give the statutory ONR flexibility over its financial and employment arrangements to ensure it can meet its resource requirements on a fully sustainable basis.

126. The proposal will not affect the current regulatory requirements or standards with which industry must comply, and the vast majority of the costs of the regulator would continue to be recovered in charges from operators in the nuclear industry rather than funded by the public purse. Additional organisational costs will be entirely met by the nuclear industry.

ONR Board and Reporting

127. The Energy Bill will enable the appointment of a skills-based Board that is accountable to Ministers and to Parliament. The Board should consist of between five and seven non-executive members and no more than four executive members. Among the executive members will be the Chief Nuclear Inspector (CNI) and the Chief Executive Officer (CEO). Among the non-executives will be the ONR chair and one member with security experience. There will also be an option for an HSE board member to sit on the ONR Board to ensure consistency with health and safety policy.

128. Under the legislation, the Board will be responsible for exercising all the functions of the ONR. However, the non-executive directors, beyond participating at Board level, will not be able to undertake specific regulatory functions, such as the granting of site licences. In practice, it is expected that all

18

http://www.decc.gov.uk/assets/decc/what%20we%20do/uk%20energy%20supply/energy%20mix/nuclear/whitepaper08/1_20091116131031_e_@@_nuclearreviewstoneadvice.pdf

regulatory functions will be delegated to the CNI who will then delegate functions as appropriate to ONR staff or a committee.

129. In order to set out its regulatory priorities clearly, the legislation will require the ONR to produce and publish a five-year strategy and annual plan. It will also be required to produce an annual report of its activities as well as annual accounts, which are to be audited and laid before Parliament.

Need for legislation

130. By creating the ONR as a statutory body, the Government seeks to consolidate and streamline the arrangements under which the ONR currently operates. This includes reducing reliance on the current network of agreements that permit various nuclear functions to be performed by the HSE on the Secretary of State's behalf. As a result, the ONR will have direct responsibility for the functions that it performs.

131. Only as a statutory body that has its own powers, focused responsibilities and control over its resources, will the ONR be able to secure the full benefits sought from restructuring. These benefits include having the financial and organisational flexibility needed to meet its business needs on a sustainable basis.

132. The statutory ONR will carry out the present work of the interim ONR, but the Energy Bill, together with regulations made under it, will give it direct ownership and statutory responsibility for the nuclear regulatory functions for safety, security, safeguards and transport and for regulating health and safety at nuclear sites. There will be appropriate Secretary of State controls over the statutory ONR, for which the Secretary of State will be accountable to Parliament. All of these outcomes require legislation in order to deliver them.

The Draft Energy Bill includes:

- powers to conferring responsibility for regulatory functions to ONR;
- establishing the role of the Chief Nuclear Inspector as a statutory post; and
- regulation making powers to enable the ONR to recover its regulatory costs.

Offshore transmission

Introduction

133. Under the regulatory regime for offshore development and transmission, offshore wind developers cannot hold both generation and transmission licences. Transmission assets must be operated by Offshore Transmission Owners (OFTOs) who are granted their licence following a competitive tender process carried out by Ofgem. Transmission to any premises without a licence (or exemption from the licence requirement) is prohibited.

134. In response to stakeholder concerns following a consultation in 2010[19], Government decided to enable offshore windfarm developers to build their own transmission infrastructure back to shore for the export of power. This has been called the generator build option[20]. Developers constructing an offshore generating station therefore now have the choice of also constructing the offshore transmission assets for the purposes of connecting the offshore generating station to the onshore grid, before transferring these assets to an Offshore Transmission Owner (OFTO) through a competitive tender process. Before transferring to an OFTO, developers need to convey electricity on these transmission assets in order to test and commission them.

135. However, a developer or any other person conveying electricity to any premises over the offshore transmission assets in these circumstances is likely to be regarded as participating in the transmission of electricity without a licence for a significant period of time. As set out above, participation in transmission without a licence (in the absence of any applicable exemptions) is prohibited.

136. In order to solve this problem, the draft Bill creates an exception to the prohibition of participating in the transmission of electricity without a licence for a person:

[19] http://www.decc.gov.uk/en/content/cms/meeting_energy/network/offshore_dev/offshore_dev.aspx

[20] http://www.decc.gov.uk/en/content/cms/meeting_energy/network/offshore_dev/offshore_dev.aspx

- who participates in offshore transmission activity over an offshore transmission system or any assets in relation to that system;
- during a commissioning period;
- where that transmission system has been qualified into the competitive tender process but has not transferred to the successful bidder (OFTO); and
- where the developer who makes the request to connect the transmission assets to the onshore grid:
    - constructed or installed the transmission assets (either themselves or through someone acting on their behalf); and
    - is the operator of a generating station which generates electricity transmitted over that transmission system.

Background

137. Offshore windfarm generator developers are concerned about the commissioning and testing of offshore transmission assets under the 'generator build' option.

138. Government recognises the strong preference of these developers to be able to convey electricity on their transmission assets prior to transfer of the assets to a licensed OFTO. Some conveyance of electricity is considered necessary in order to test and commission the transmission assets to facilitate the acceptance of the assets by an OFTO. Government also recognises that it is desirable for renewable electricity to keep flowing over these assets during the finalisation of commercial activities to reach financial close and grant a transmission licence to an OFTO.

139. The Department of Energy and Climate Change (DECC) and Ofgem have worked together to develop a solution to these concerns, which balances the need for generators to be able to test and commission their transmission assets, with the need to ensure that generators transfer the transmission assets to the OFTO in a timely manner.

Need for legislation

140. The legislative proposal in the draft Bill amends section 4 of the Electricity Act 1989 to create an exception to the prohibition of participating in the transmission of electricity without a licence, for a person who participates in offshore transmission activity during a commissioning period in certain circumstances. This technical change to the Electricity Act 1989 is crucial to ensure that UK offshore developers can test and commission infrastructure to export power without committing a criminal offence. Not making this minor, technical change could act as a barrier to offshore wind infrastructure investment – and the contribution to growth and jobs this is bringing – as well as to meeting legally binding EU laws and targets.

The Draft Energy Bill includes:

- provision to permit the transmission of electricity without a licence by a person who participates in offshore transmission activity during a commissioning period in certain circumstances.

Government Pipeline and Storage System (GPSS)

Introduction

141. The Energy Bill introduces provisions to allow the sale of a Ministry of Defence (MOD) held asset that supplies aviation fuel to military airbases in the UK, as well as a number of civilian airports. The MOD has previously reviewed the pipeline and concluded that it does not need to be owned by the Government. Legislation is required to create a set of transferable rights necessary to operate the GPSS and remove restrictions on developing the system for greater commercial usage unless there is an underlying defence requirement.

Background

142. The Government Pipeline and Storage System (GPSS) was established to provide a secure oil distribution network for the United Kingdom at the beginning of World War Two in 1939. Over many years the pipeline route has been extended and amended until it now covers approximately 2,500 km of pipe and associated storage depots, pumping stations and other sites. The GPSS distributes about 40 per cent of the aviation fuel within the UK and is used to supply important commercial airports such as Heathrow and Gatwick, along with Royal Air Force (RAF) and United States Air Force bases in England and Scotland.

143. Following a review of the status of the GPSS involving the Ministry of Defence and a number of other Government Departments, it has been concluded that the GPSS does not need to be retained in public ownership. The benefits of selling the GPSS include: generating a capital receipt for Government; enabling increased private sector investment in the pipeline in order to increase the resilience of the system; and allowing commercial development by removing current restrictions on developing the system for greater commercial usage unless there is an underpinning defence requirement. Once sold, the MOD will contract with the buyer to meet its ongoing requirements of the GPSS. It will also seek to protect the interests of other customers during negotiations to sell the GPSS.

Need for legislation

144. The GPSS mainly runs on, or under, private land and was built under a mixture of private agreements and pre-war, wartime and post-war legislation. Because the rights to use and maintain the GPSS and to access that private land are personal to the Secretary of State for Defence, legislation is required to create a transferrable package of rights before the pipeline can be sold.

145. The Energy Bill provides for rights to: maintain, use, remove, replace and renew the GPSS; to restore land if the GPSS is removed or abandoned; to inspect or survey the GPSS or affected land; and to enter land for any of these purposes. It will also require the Secretary of State to pay compensation to a person whose interest in land is depreciated by reason of the creation of these rights and the owner of the pipeline to pay compensation for any damage to property as a result of the exercise of the rights.

146. Once sold, the GPSS will be operated under a similar legal regime to civilian pipelines constructed under the Pipelines Act 1962. A final decision on whether to proceed with sale will be taken once the legislation has been passed and further work has confirmed that the sale will still provide value for money.

The Draft Energy Bill includes:

- rights to maintain, use, remove, replace and renew the GPSS and associated rights of access;
- provision for registration of the transferrable rights; and
- an entitlement to compensation where the value of an interest in land is depreciated as a result of the creation of these rights or where loss is caused by the exercise of these rights.

Section 4: Draft Energy Bill

Energy Bill

CONTENTS

PART 2

NUCLEAR REGULATION

CHAPTER 1

THE ONR'S PURPOSES

CHAPTER 2

NUCLEAR REGULATIONS

CHAPTER 3

OFFICE FOR NUCLEAR REGULATION

CHAPTER 4

FUNCTIONS OF THE ONR

Functions of ONR: general

Other functions

PART 4

MISCELLANEOUS AND GENERAL

Offshore transmission

General

A

B I L L

TO

Make provision for contracts for difference and investment instruments in connection with encouraging low carbon electricity generation; for establishing a capacity market in relation to energy supply; in connection with the renewables obligation; for imposing an annual carbon dioxide emissions limit on fossil fuel plants; about the designation of a strategy and policy statement; for the establishment and functions of the Office for Nuclear Regulation; about the government pipe-line and storage system and rights exercisable in relation to it; about offshore transmission of electricity during a commissioning period; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

ELECTRICITY MARKET REFORM

CHAPTER 1

CONTRACTS FOR DIFFERENCE

1 Power to make regulations about contracts for difference

(1) The Secretary of State may make regulations about contracts for difference for the purpose of encouraging low carbon electricity generation.

(2) A contract for difference is referred to in this Chapter as a "CFD" and regulations made under subsection (1) are referred to as "CFD regulations".

(3) A CFD is an instrument which, if issued to an electricity generator, imposes obligations in accordance with the terms of the instrument and any provision made by the CFD regulations on—

(a) the electricity generator, and

(b) all electricity suppliers.

(4) The obligations referred to in subsection (3) may in particular include an obligation for the parties to make payments to or for the benefit of each other based on the difference between—

(a) a strike price for electricity (see section 5), and

(b) a market reference price for electricity (see section 6).

(5) But subsection (4) is without prejudice to provision which may be made under this Chapter about alternative payment obligations under a CFD.

(6) The provision which may be included in CFD regulations includes, but is not limited to, the provision described in this section and sections 2 to 7.

(7) In this Chapter—

"the 1989 Act" means the Electricity Act 1989;

"low carbon electricity generation" means electricity generation which in the opinion of the Secretary of State will contribute to a reduction in emissions of targeted greenhouse gases within the meaning of Part 1 of the Climate Change Act 2008;

"electricity generator" is to be construed in accordance with provision made by the CFD regulations (see section 3);

"electricity supplier" means—

(a) a person who is a holder of a licence to supply electricity under section 6(1)(d) of the 1989 Act at the time a CFD is issued;

(b) a person who becomes a holder of such a licence after a CFD is issued.

2 Issuing a CFD

(1) The national system operator may issue a CFD in accordance with—

(a) any provision made for that purpose by the CFD regulations;

(b) the conditions of its licence under section 6(1)(b) of the 1989 Act (see further section 10 of this Act as to modification of the licence).

(2) The Secretary of State may issue a CFD in accordance with any provision made for that purpose by the CFD regulations.

(3) In this Chapter "national system operator" means the person operating the national transmission system for Great Britain (and for this purpose "transmission system" has the same meaning as in the 1989 Act - see section 4(4) of that Act).

3 Meaning of "electricity generator"

(1) The CFD regulations may include provision about the meaning of "electricity generator" for the purpose of a CFD.

(2) Provision included in the CFD regulations by virtue of subsection (1) may in particular include provision by reference to—

(a) the means by which electricity is to be generated;

(b) the generating capacity of an electricity generating plant;

(c) the geographical location of an electricity generating plant;

(d) the geographical location to which electricity is to be supplied.

4 Terms of a CFD

(1) The CFD regulations may include provision about the terms which may or must be included in a CFD.

(2) Provision included in the CFD regulations by virtue of subsection (1) may include descriptions of terms or sample terms (or both).

(3) Provision included in the CFD regulations by virtue of subsection (1) may include such provision as the Secretary of State considers necessary or desirable and, in particular, provision about—

(a) the duration of a CFD;

(b) the obligations of a person who ceases to be a holder of a licence under section 6(1)(d) of the 1989 Act after a CFD is issued;

(c) the obligations of a person who becomes a holder of such a licence after a CFD is issued;

(d) requirements for the parties to a CFD to enter into agreements with a third party;

(e) the means by which payments due under a CFD are to be calculated;

(f) the person or body who is to administer the settlement of payments due under a CFD;

(g) the provision of information by the parties to a CFD, either to each other or to a third party;

(h) the sharing of information provided under a CFD;

(i) the settlement of disputes relating to a CFD;

(j) the setting of a strike price for the purposes of a CFD (see section 5);

(k) the setting of a market reference price for the purposes of a CFD (see section 6);

(l) enforcement of the terms of a CFD (including provision for the terms to be enforced as if the CFD were a private contract between the parties);

(m) any penalty payable under a CFD;

(n) the circumstances in which a CFD may be terminated or varied or the obligations under it assigned.

5 Strike price

(1) The strike price for a CFD is the price of electricity per megawatt hour that may be specified in, or determined under, the CFD as the strike price for electricity generated in the period to which the CFD applies.

(2) Provision included in the CFD regulations by virtue of section 4(3)(j) may in particular include—

(a) provision for setting the strike price by or under the CFD regulations ("administrative setting");

(b) provision for setting the strike price by determination on a competitive basis ("competitive setting");

(c) provision for a combination of administrative and competitive setting, including providing for the lower of two prices set by administrative setting and competitive setting.

(3) Provision falling within subsection (2) may include provision for a person other than the Secretary of State to set a strike price.

6 Market reference price

(1) The market reference price for a CFD is the price of electricity per megawatt hour that may be specified in, or determined under, the CFD as the market reference price for electricity generated in the period to which the CFD applies.

(2) The provision included in the CFD regulations by virtue of section 4(3)(k) may in particular include provision for setting the reference price by or under the CFD regulations, including provision for a person other than the Secretary of State to set the market reference price.

7 Functions of the Authority: CFD regulations

The CFD regulations may make provision conferring functions on the Gas and Electricity Markets Authority for the purpose of monitoring and determining obligations imposed by a CFD.

8 Order for maximum cost and targets relating to CFDs

(1) The Secretary of State may by order provide for—

(a) the maximum cost which may be incurred by virtue of the issue of CFDs (and such cost is to be calculated in accordance with provision made by or under the order);

(b) a power for the Secretary of State to direct the national system operator that the maximum cost has been incurred;

(c) a power for the Secretary of State to direct the national system operator not to issue a CFD if the Secretary of State believes that by virtue of it being issued a cost greater than the maximum cost provided for by the order would be incurred;

(d) any other targets to be met or taken into account by the national system operator in the issuing of CFDs.

(2) Provision made by virtue of subsection (1)(d) may in particular include targets relating to—

(a) the means by which electricity is to be generated;

(b) the generating capacity of electricity generating plants;

(c) the geographical location of electricity generating plants.

9 Consultation

(1) Before making regulations or an order under this Chapter the Secretary of State must consult—

(a) the Scottish Ministers,

(b) the Welsh Ministers,

(c) any person who is a holder of a licence to supply electricity under section 6(1)(d) of the 1989 Act,

(d) the national system operator, and

(e) such other persons as the Secretary of State thinks it appropriate to consult.

(2) The requirement to consult may be satisfied by consultation before, as well as consultation after, the passing of this Act.

10 Licence modifications for the purpose of CFDs

(1) The Secretary of State may modify—

(a) a condition of a particular licence under section 6(1)(b) of the 1989 Act (transmission licences);

(b) the standard conditions incorporated in licences under that provision by virtue of section 8A(1A) of that Act;

(c) a document maintained in accordance with the conditions of licences under that provision, or an agreement that gives effect to a document so maintained.

(2) The Secretary of State may make a modification under subsection (1) only for the purpose of—

(a) conferring functions on the national system operator in connection with CFDs;

(b) making provision for the administration of the settlement of payments due under a CFD.

(3) The power to make modifications conferred by subsection (1) ("the modification power")—

(a) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);

(b) may be exercised differently in different cases or circumstances;

(c) includes a power to make incidental, supplementary, consequential or transitional modifications.

(4) Provision included in a licence, or in a document or agreement relating to licences, by virtue of the modification power—

(a) may in particular include provision of a kind that may be included in the CFD regulations;

(b) may make different provision for different cases;

(c) need not relate to the activities authorised by the licence;

(d) may do any of the things authorised by section 7(2A), (3) or (4) of the 1989 Act (which applies to the power of the Authority with respect to licence conditions under section 7(1)(a) of that Act).

(5) Before making a modification under this section, the Secretary of State must consult—

(a) the Scottish Ministers,

(b) the Welsh Ministers,

(c) the holders of any licence being modified,

(d) any person who is a holder of a licence to supply electricity under section 6(1)(d) of the 1989 Act,

(e) the Authority, and

(f) such other persons as the Secretary of State thinks it appropriate to consult.

(6) Subsection (5) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

(7) The Secretary of State must publish details of any modifications as soon as reasonably practical after they are made.

(8) If under the modification power the Secretary of State makes modifications of the standard conditions of a licence, the Authority must—

(a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and

(b) publish the modification.

(9) A modification under the modification power of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the 1989 Act.

(10) In section 137(3) of the Energy Act 2004 (standard conditions of transmission licences under Part 1 of the 1989 Act)—

(a) after paragraph (d) omit "or";

(b) after paragraph (e) insert ", or

(f) under section 10 of the Energy Act 2012.".

(11) In this section—

"the Authority" means the Gas and Electricity Markets Authority;

"functions" includes powers and duties;

"modify" includes amend, add to or repeal (and references to modifications are to be construed accordingly).

11 Section 10: Parliamentary procedure

(1) Before making modifications under section 10 the Secretary of State must lay a draft of the modifications before Parliament.

(2) If, within the 40-day period, either House of Parliament resolves not to approve the draft, the Secretary of State may not take any further steps in relation to the proposed modifications.

(3) If no such resolution is made within that period, the Secretary of State may make the modifications in the form of the draft.

(4) Subsection (2) does not prevent a new draft of proposed modifications being laid before Parliament.

(5) In this section "40-day period", in relation to a draft of proposed modifications, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).

(6) For the purposes of calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

12 General considerations

(1) In exercising the function of—

(a) making CFD regulations;

(b) making an order under section 8;

(c) making a modification under section 10,

the Secretary of State must have regard to the matters mentioned in subsection (2).

(2) The matters are—

(a) ensuring the security of supply to consumers of electricity in Great Britain;

(b) the likely cost to consumers of electricity in Great Britain;

(c) the duties of the Secretary of State under section 1 and 4(1)(b) of the Climate Change Act 2008 (carbon targets and budgets);

(d) the target set out in Article 3(1) and Annex 1 to the renewables directive (use of energy from renewable sources).

(3) In subsection (2)(d) "the renewables directive" means Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources.

13 Regulations and orders under Chapter 1

(1) Regulations and orders under this Chapter—

(a) may make different provision for different cases or circumstances or for different purposes;

(b) may include incidental, supplementary, consequential or transitional provision.

(2) Regulations and orders under this Chapter are to be made by statutory instrument.

(3) A statutory instrument containing CFD regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) A statutory instrument containing an order under section 8 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

CHAPTER 2

INVESTMENT INSTRUMENTS

14 Investment instruments

(1) In this Chapter an "investment instrument" means an instrument which, if issued by the Secretary of State to an electricity generator, imposes obligations in accordance with the terms of the instrument on—

(a) the electricity generator, and

(b) all electricity suppliers.

(2) In subsection (1) "electricity generator" means—

(a) a person who intends to establish an electricity generating station or alter an existing station;

(b) a person who intends to operate or participate in the operation of an electricity generating station that is to be established or altered;

(c) a person who has, or intends to acquire, a freehold or leasehold interest in all or part of an electricity generating station that is to be established or altered;

(d) a person who has an interest in a company falling within sub-paragraph (a), (b) or (c).

(3) The obligations referred to in subsection (1) may in particular include an obligation for the parties to make payments to or for the benefit of each other based on the difference between a strike price and a market reference price.

(4) But subsection (3) is without prejudice to provision which may be made by the terms of an investment instrument about alternative payment obligations.

(5) In subsection (3)—

(a) "strike price" means the price of electricity per megawatt hour that is specified in, or determined under, the instrument as the strike price for electricity generated in the period to which the instrument applies;

(b) "market reference price" means the price of electricity per megawatt hour that is specified in, or determined under, the instrument as the market reference price for electricity generated in that period.

(6) Provision included in an investment instrument may also include such provision as the Secretary of State considers necessary or desirable and, in particular, provision about—

(a) the duration of an investment instrument;

(b) the obligations of a person who ceases to be a holder of a licence under section 6(1)(d) of the 1989 Act after an investment instrument is issued;

(c) the obligations of a person who becomes a holder of such a licence after an investment instrument is issued;

(d) requirements for the parties to an investment instrument to enter into agreements with a third party;

(e) the means by which payments due under an investment instrument are to be calculated;

(f) the person or body who is to administer the settlement of payments due under an investment instrument;

(g) the provision of information by the parties to an investment instrument, either to each other or to a third party;

(h) the sharing of information provided under an investment instrument;

(i) the settlement of disputes relating to an investment instrument;

(j) the setting of a strike price for the purposes of an investment instrument;

(k) the setting of a market reference price for the purposes of an investment instrument;

(l) enforcement of the terms of an investment instrument (including provision for the terms to be enforced as if the instrument were a private contract between the parties);

(m) any penalty payable under an investment instrument;

(n) the circumstances in which an investment instrument may be terminated or varied or the obligations under it assigned.

(7) In this Chapter—

"the 1989 Act" means the Electricity Act 1989;

"electricity supplier" means—

(a) a person who is a holder of a licence to supply electricity under section 6(1)(d) of the 1989 Act at the time an investment instrument is issued;

(b) a person who becomes a holder of such a licence after an investment instrument is issued.

15 Secretary of State duty to issue an investment instrument

(1) The Secretary of State must issue an investment instrument under this section if conditions 1 and 2 are satisfied.

(2) Condition 1 is that the Secretary of State has laid a draft of the instrument before Parliament during the period between the introduction into Parliament of the Bill that becomes this Act and the enactment of this Act, together with a statement that the Secretary of State—

(a) is laying the draft in anticipation of the commencement of this section,

(b) considers that issuing the instrument would encourage low carbon energy generation,

(c) considers that unless the draft is laid in anticipation of this section there is a significant risk that the low carbon energy generation to which the instrument would relate will not occur or will be significantly delayed, and

(d) considers that issuing the instrument would be appropriate having regard to—

(i) ensuring the security of supply to consumers of electricity in Great Britain;

(ii) the likely cost to such consumers;

(iii) the duties of the Secretary of State under section 1 and 4(1)(b) of the Climate Change Act 2008 (carbon budgeting).

(3) Condition 2 is that before the draft was laid—

(a) the electricity generator to whom the instrument would be issued consented to the laying of the draft, and

(b) each person who is a holder of a licence to supply electricity under section 6(1)(d) of the 1989 Act was consulted in relation to the draft.

(4) The Secretary of State must publish the draft as soon as reasonably practicable after it is laid.

(5) For the purposes of any consultation under subsection (3)(b) the Secretary of State must not disclose information which the Secretary of State considers consists of trade secrets or sensitive commercial information, unless the person to whom the information relates consents to the disclosure.

(6) Subsection (1) does not apply if the Secretary of State considers that issuing the instrument would constitute the grant of state aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union and is required to be notified to and approved by the European Commission.

(7) The Secretary of State must publish an instrument as soon as reasonably practicable after it is issued under this section.

(8) In this section and section 16, "low carbon electricity generation" means electricity generation which in the opinion of the Secretary of State will contribute to a reduction in emissions of targeted greenhouse gases within the meaning of Part 1 of the Climate Change Act 2008 (see section 24 of that Act).

16 Secretary of State power to issue an investment instrument

(1) The Secretary of State may issue an investment instrument under this section if conditions 1 and 2 are satisfied.

(2) Condition 1 is that a draft of the instrument has been laid before Parliament together with a statement that the Secretary of State considers that issuing the instrument—

(a) would encourage additional low carbon electricity generation, and

(b) would be appropriate having regard to—

(i) ensuring the security of supply to consumers of electricity in Great Britain;

(ii) the likely cost to such consumers;

(iii) the duties of the Secretary of State under section 1 and 4(1)(b) of the Climate Change Act 2008 (carbon targets and budgets).

(3) Condition 2 is that—

(a) the electricity generator to whom the instrument is issued consents to it being issued, and

(b) each person who is a holder of a licence to supply electricity under section 6(1)(d) of the 1989 Act was consulted in relation to the draft.

(4) For the purposes of subsection (3)—

(a) the requirement for consent may be satisfied by consent given before, as well as consent given after, the passing of this Act, and

(b) the requirement to consult may be satisfied by consultation before, as well as consultation after, the passing of this Act.

(5) For the purposes of any consultation under subsection (3)(b) the Secretary of State must not disclose information which the Secretary of State considers consists of trade secrets or sensitive commercial information, unless the person to whom the information relates consents to the disclosure.

(6) The Secretary of State must publish an instrument as soon as reasonably practicable after it is issued under this section.

(7) This section ceases to have effect on the earlier of—

(a) 31st December 2015,

(b) the date on which CFD regulations under section 1 first confer a power on the Secretary of State to issue a CFD (as defined in that section).

17 Licence modifications for the purpose of investment instruments

(1) The Secretary of State may modify—

(a) a condition of a particular licence under section 6(1)(a), (b) or (d) of the 1989 Act (generation, transmission and supply licences);

(b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;

(c) a document maintained in accordance with the conditions of licences under those provisions, or an agreement that gives effect to a document so maintained.

(2) A modification under this section may in particular include a modification—

(a) to provide for a new document to be required to be prepared and maintained in accordance with the conditions of a licence;

(b) to provide for an agreement to give effect to a document so maintained.

(3) The Secretary of State may make a modification under this section only for the purpose of—

(a) conferring functions on the national system operator in connection with investment instruments;
(b) making provision for the administration of the settlement of payments due under an investment instrument.

(4) The power to make modifications ("the modification power") —
(a) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);
(b) may be exercised differently in different cases or circumstances;
(c) includes a power to make incidental, supplementary, consequential or transitional modifications.

(5) Provision included in a licence or in a document or agreement relating to licences, by virtue of the modification power —
(a) may make different provision for different cases;
(b) need not relate to the activities authorised by the licence;
(c) may do any of the things authorised by section 7(2A), (3) or (4) of the 1989 Act (which applies to the power of the Authority with respect to licence conditions under section 7(1)(a) of that Act).

(6) Before making a modification under this section, the Secretary of State must consult —
(a) the holders of any licence being modified,
(b) any person who is a holder of a licence to supply electricity under section 6(1)(d) of the 1989 Act,
(c) the Authority, and
(d) such other persons as the Secretary of State thinks it appropriate to consult.

(7) Subsection (6) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

(8) The Secretary of State must publish details of any modifications under this section as soon as reasonably practical after they are made.

(9) If under the modification power the Secretary of State makes modifications of the standard conditions of a licence, the Authority must —
(a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
(b) publish the modification.

(10) A modification under the modification power of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the 1989 Act.

(11) In section 33(1) of the Utilities Act 2000 (standard conditions of electricity licences) —
(a) after paragraph (e) omit "or";
(b) after paragraph (f) insert ", or
(g) under section 17 of the Energy Act 2012.".

(12) In section 137(3)(f) of the Energy Act 2004 (standard conditions of transmission licences under Part 1 of the 1989 Act), as inserted by section 10(10) of this Act, after "section 10" insert "or section 17".

(13) In this section—

"the Authority" means the Gas and Electricity Markets Authority;

"functions" includes powers and duties;

"modify" includes amend, add to or repeal (and references to modifications are to be construed accordingly);

"national system operator" means the person operating the national transmission system for Great Britain (and for this purpose "transmission system" has the same meaning as in the 1989 Act - see section 4(4) of that Act).

18 Section 17: Parliamentary procedure

(1) Before making modifications under section 17 the Secretary of State must lay a draft of the modifications before Parliament.

(2) If, within the 40-day period, either House of Parliament resolves not to approve the draft, the Secretary of State may not take any further steps in relation to the proposed modifications.

(3) If no such resolution is made within that period, the Secretary of State may make the modifications in the form of the draft.

(4) Subsection (2) does not prevent a new draft of proposed modifications being laid before Parliament.

(5) In this section "40-day period", in relation to a draft of proposed modifications, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).

(6) For the purposes of calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

19 Regulations for the purpose of investment instruments

(1) The Secretary of State may by regulations make further provision about or in connection with investment instruments.

(2) The regulations may in particular include provision to confer functions on the Gas and Electricity Markets Authority or any other body for any purpose related to provision that is made by, or may be made under, this Chapter.

(3) Regulations under this section—

(a) may make different provision for different cases or circumstances or for different purposes;

(b) may include incidental, supplementary, consequential or transitional provision.

(4) Before making any regulations under this Chapter the Secretary of State must consult—

(a) any person on whom the regulations would confer a function,

(b) any generator who is a party to an investment instrument,
(c) any person who is a holder of a licence to supply electricity under section 6(1)(d) of the 1989 Act, and
(d) such other persons as the Secretary of State considers it appropriate to consult.

(5) Regulations under this section are to be made by statutory instrument.

(6) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

CHAPTER 3

CAPACITY MARKET

20 Power to make electricity capacity regulations

(1) The Secretary of State may by regulations make provision for the purpose of providing capacity to meet the demands of consumers for the supply of electricity in Great Britain.

(2) Regulations under this section are referred to in this Chapter as "electricity capacity regulations".

(3) In subsection (1) "providing capacity" means providing electricity or reducing demand for electricity; and electricity capacity regulations may make further provision about the meaning of "providing electricity" or "reducing demand for electricity".

(4) The provision that may be made in electricity capacity regulations includes, but is not limited to, the provision described in sections 21 to 26.

(5) In this Chapter—
"the 1989 Act" means the Electricity Act 1989;
"the Authority" means the Gas and Electricity Markets Authority;
"national system operator" means the person operating the national transmission system for Great Britain (and for this purpose "transmission system" has the same meaning as in the 1989 Act - see section 4(4) of that Act).

21 Capacity agreements

(1) Electricity capacity regulations may make provision about capacity agreements.

(2) Subject to any further provision made under this Chapter, a capacity agreement is an instrument by virtue of which—
(a) the holder of the capacity agreement ("the capacity provider") may be required to provide capacity;
(b) all electricity suppliers may be required to make payments ("capacity payments") to or for the benefit of capacity providers;
(c) capacity providers may be required to make payments ("capacity incentives") to or for the benefit of all electricity suppliers.

(3) Provision included in electricity capacity regulations for the purposes of subsection (2) may in particular make provision about the meaning of "electricity supplier".

(4) Provision included in electricity capacity regulations by virtue of subsection (1) may in particular include provision about—

(a) the terms of a capacity agreement;
(b) the circumstances in which, and the process by which, a capacity agreement may or must be issued;
(c) the persons who may be capacity providers;
(d) the circumstances in which capacity must be available;
(e) the duration of a capacity agreement;
(f) the means by which capacity payments or capacity incentives are to be calculated;
(g) the person or body who is to administer the settlement of capacity payments or capacity incentives;
(h) the enforcement of the terms of a capacity agreement;
(i) the settlement of disputes relating to a capacity agreement;
(j) the circumstances in which a capacity agreement may be terminated or varied;
(k) the circumstances in which a capacity agreement may be assigned or traded.

(5) Provision falling within subsection (4) includes, in particular, provision—

(a) conferring on the national system operator the function of issuing capacity agreements;
(b) relating to the outcome of a capacity auction (see section 22);
(c) about any conditions that must be satisfied by or in relation to a person before that person may enter a capacity auction or become a capacity provider;
(d) about any matters in relation to which a person must satisfy the national system operator before the person may enter a capacity auction or become a capacity provider.

(6) Provision made by virtue of subsection (5)(c) may in particular include provision requiring a person to consent to the inspection of plant or premises, either before or after that person becomes a capacity provider.

22 Capacity auctions

(1) Electricity capacity regulations may make provision for the determination on a competitive basis of who may be a capacity provider (referred to in this Chapter as a "capacity auction").

(2) Provision included in electricity capacity regulations by virtue of subsection (1) may in particular include provision—

(a) for the national system operator to run a capacity auction;
(b) about the circumstances in which a capacity auction may or must be held;
(c) about the amount of capacity in relation to which a determination may be made;
(d) about the intervals at which a capacity auction may or must be held;
(e) about the process by which a capacity auction may or must be run;

(f) about the manner in which the Secretary of State may decide whether and how to exercise any function in relation to capacity auctions.

(3) Provision falling within subsection (2)(a) may in particular include provision—

(a) requiring the national system operator to prepare and publish rules or guidance about capacity auctions;

(b) about any process to be followed in preparing and publishing any such rules or guidance.

(4) Provision falling within subsection (2)(f) may in particular include provision about—

(a) the frequency with which a decision will be made and reviewed;

(b) the persons who will be consulted before a decision is made;

(c) the matters to be taken into account in reaching a decision.

23 Functions of the Authority: electricity capacity regulations

Electricity capacity regulations may make provision conferring functions on the Authority for any purpose related to provision that is made by, or may be made under, this Chapter.

24 Other requirements

(1) Electricity capacity regulations may impose requirements otherwise than by means of a capacity agreement.

(2) The persons on whom requirements may be imposed by virtue of subsection (1) include, in particular—

(a) any person who is a holder of a licence under section 6(1) of the 1989 Act;

(b) any other person carrying out functions in relation to capacity agreements;

(c) any other person who is, or has ceased to be, a capacity provider.

(3) Requirements which may be imposed by virtue of subsection (1) include, in particular, requirements—

(a) relating to the manner in which functions are to be exercised;

(b) relating to restrictions on the use of generating plant;

(c) relating to participation in a capacity auction;

(d) relating to the inspection of plant or property.

(4) Provision included in electricity capacity regulations by virtue of subsection (1) may in particular include provision about the enforcement of any requirement imposed.

25 Information

(1) Electricity capacity regulations may make provision about the provision and publication of information.

(2) Provision included in electricity capacity regulations by virtue of subsection (1) may in particular include provision—

(a) for the Secretary of State to require the Authority, the national system operator or any other person specified in the regulations to provide

information or advice to the Secretary of State or any other person so specified;

(b) for the Authority or the national system operator to require information to be provided to it by any person specified in the regulations for any purpose so specified;

(c) for the Secretary of State to require capacity providers and electricity suppliers to share information about the operation of capacity agreements with each other or with any other person so specified;

(d) for the publication by any person so specified of any information or advice so specified;

(e) for the classification and protection of confidential or sensitive information;

(f) for the enforcement of any requirement imposed by virtue of paragraphs (a) to (e).

26 Enforcement and dispute resolution

(1) Provision in electricity capacity regulations about enforcement or the resolution of disputes may include provision conferring functions on the Authority, any public body or any other person.

(2) Provision made by virtue of subsection (1) may in particular include provision—

(a) about powers to impose financial penalties;

(b) for requirements under the electricity capacity regulations to be enforceable by the Authority as if they were relevant requirements on a regulated person for the purposes of section 25 of the 1989 Act;

(c) about reference to arbitration;

(d) about appeals.

27 Licence modifications for the purpose of the capacity market

(1) The Secretary of State may for any purpose related to provision that is made by, or may be made under, this Chapter modify—

(a) a condition of a particular licence under section 6(1)(a) to (e) of the 1989 Act (generation, transmission, distribution, supply and interconnector licences);

(b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;

(c) a document maintained in accordance with the conditions of licences under those provisions, or an agreement that gives effect to a document so maintained.

(2) A modification under this section may in particular include a modification—

(a) to provide for a new document to be required to be prepared and maintained in accordance with the conditions of a licence;

(b) to provide for an agreement to give effect to a document so maintained;

(c) to confer functions on the national system operator.

(3) The power to make modifications ("the modification power")—

(a) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);

(b) may be exercised differently in different cases or circumstances;
(c) includes a power to make incidental, supplementary, consequential or transitional modifications.

(4) Provision included in a licence or in a document or agreement relating to licences, by virtue of the modification power—
(a) may in particular include provision of any kind that may be included in electricity capacity regulations;
(b) may make different provision for different cases;
(c) need not relate to the activities authorised by the licence;
(d) may do any of the things authorised by section 7(2A), (3) or (4) of the 1989 Act (which applies to the power of the Authority with respect to licence conditions under section 7(1)(a) of that Act).

(5) Before making a modification under this section, the Secretary of State must consult—
(a) the holders of any licence being modified,
(b) the Authority, and
(c) such other persons as the Secretary of State thinks it appropriate to consult.

(6) Subsection (5) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

(7) The Secretary of State must publish details of any modifications under this section as soon as reasonably practical after they are made.

(8) If under the modification power the Secretary of State makes modifications of the standard conditions of a licence, the Authority must—
(a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
(b) publish the modification.

(9) A modification under the modification power of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the 1989 Act.

(10) In section 33(1)(g) of the Utilities Act 2000 (standard conditions of electricity licences), as inserted by section 17(11) of this Act, after "section 17" insert "or section 27".

(11) In section 137(3)(f) of the Energy Act 2004 (standard conditions of transmission licences under Part 1 of the 1989 Act), as inserted by section 10 of this Act, after "section 17" insert "or section 27".

(12) In section 146(5) of the Energy Act 2004 (standard conditions for electricity interconnectors) for "or under section 98 of the Energy Act 2011" substitute ", under section 98 of the Energy Act 2011 or section 27 of the Energy Act 2012".

(13) In this section—
"functions" includes powers and duties;
"modify" includes amend, add to or repeal (and references to modifications are to be construed accordingly).

28 Amendment of enactments

The Secretary of State may by regulations, for the purpose of or in connection with any provision made by or under this Chapter—

(a) amend or repeal section 43ZA of the 1989 Act (annual report by Authority on security of electricity supply);

(b) amend section 172 of the Energy Act 2004 (annual report on security of energy supplies);

(c) amend section 25 of and Schedule 6A to the Electricity Act 1989 (enforcement of obligations of regulated persons);

(d) make such provision amending, repealing or revoking any other enactment as the Secretary of State considers appropriate in consequence of provision made by or under this Chapter.

29 Principle objective and general duties

Sections 3A to 3D of the 1989 Act (principal objective and general duties) apply in relation to functions of the Secretary of State or the Authority under or by virtue of this Chapter as they apply in relation to functions under Part 1 of that Act.

30 Regulations under Chapter 3

(1) Regulations under this Chapter—

(a) may make different provision for different cases or circumstances or for different purposes;

(b) may include incidental, supplementary, consequential or transitional provision.

(2) Before making any regulations under this Chapter, the Secretary of State must consult—

(a) the Authority,

(b) any person who is an electricity supplier within the meaning given by electricity capacity regulations, and

(c) such other persons as the Secretary of State thinks it appropriate to consult.

(3) Subsection (2) may be satisfied by consultation before, as well as consultation after, the passing of this Act.

(4) Regulations under this Chapter must be made by statutory instrument.

(5) A statutory instrument containing (whether alone or with other provision)—

(a) the first set of electricity capacity regulations;

(b) regulations which contain provision amending or repealing a provision of an enactment contained in primary legislation,

may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(6) A statutory instrument containing regulations under this Chapter which contain any other provision is subject to annulment in pursuance of a resolution of either House of Parliament.

CHAPTER 4

CONFLICTS OF INTEREST

31 Transmission licences: new licence for system operation

(1) The Electricity Act 1989 is amended as follows.

(2) After section 56FC insert—

"56FD Transmission licences: new licence for system operation

(1) The Secretary of State may by order amend this Part so as to provide—
  (a) that references to a person who participates in the transmission of electricity are to be construed as not including a person who participates in system operation; and
  (b) for there to be a licensable activity of system operation and for a separate licence under section 6(1) to authorise that activity (a "system operation licence").

(2) "System operation" means the activity of co-ordinating and directing the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place.

(3) An order under this section may impose a requirement for the same person not to be the holder of both a system operation licence and one or more other kinds of licence within section 6(1).

(4) An order under this section may make consequential, transitional, incidental or supplementary provision, including—
  (a) amendments (or repeals) in any provision of this Act or any other enactment;
  (b) in the case of an order under subsection (1)(b), provision determining the conditions which are to be standard conditions for the purposes of a system operation licence;
  (c) provision modifying—
    (i) any condition of a particular licence under section 6(1)(a) to (e);
    (ii) any standard conditions of licences;
    (iii) a document maintained in accordance with the conditions of a licence, or an agreement that gives effect to any such document.

(5) An order under this section may (without limiting the generality of subsections (1) and (4)) include provision—
  (a) for a licence, and any modification of a licence, to be in writing;
  (b) for a licence, if not previously revoked, to continue in force for such period as may be specified in or determined by or under the licence;
  (c) conferring functions on the Secretary of State or the Authority.

56FE Section 56FD: supplemental

(1) Before making an order under section 56FD, the Secretary of State must consult—
  (a) the Authority, and

(b) such other persons as the Secretary of State thinks appropriate.

(2) Subject to subsections (3) and (4), a statutory instrument containing an order under section 56FD may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(3) A statutory instrument containing an order that only includes—

(a) provision under section 56FD(4)(a) that makes amendments or repeals to subordinate legislation (within the meaning of the Interpretation Act 1978), or

(b) provision within paragraph (a) together with provision under section 56D(4)(b) or (c),

is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Subsections (2) and (3) do not apply to a statutory instrument containing an order that only makes provision under section 56D(4)(b) or (c).

(5) Section 60 applies in relation to an order under section 56FD as it applies in relation to regulations under this Part."

(3) In section 106 (regulations and orders), after subsection (2) insert—

"(3) Subsection (2) does not apply to an order under section 56FD (see instead section 56FE)."

32 Modifications of transmission licences: business separation

(1) The Secretary of State may modify—

(a) a condition of a particular licence under section 6(1)(a) to (e) of the Electricity Act 1989 (generation, transmission, distribution, supply and interconnector licences);

(b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;

(c) a document maintained in accordance with the conditions of licences under section 6(1)(a) to (e) of that Act, or an agreement that gives effect to a document so maintained.

(2) The Secretary of State may make a modification under subsection (1) only for the purpose of imposing measures for or in connection with securing an appropriate degree of business separation between the carrying on of—

(a) system operation functions (or any particular such function), and

(b) any other functions (including, in a case where a measure relates to a particular system operation function, other system operation functions).

(3) "System operation functions" are—

(a) functions authorised under a transmission licence of co-ordinating and directing the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place, and

(b) EMR functions.

(4) A degree of business separation is "appropriate" for the purposes of subsection (2) if it appears to the Secretary of State to be necessary or desirable as a consequence of the conferral of EMR functions.

(5) The measures referred to in subsection (2) include, in particular, measures for or in connection with securing any of the following—

(a) the body corporate that carries on system operation functions does not carry on other functions;

(b) limitations are in place in respect of the control or influence that may be exercised over that body by another group undertaking (as defined by section 1161(5) of the Companies Act 2006);

(c) separations are in place between—

(i) the locations where system operation functions, and other functions, are carried on;

(ii) the information technology systems used for the purposes of the carrying on of system operation functions and other functions;

(d) the accounting arrangements in relation to system operation functions are separate from those in relation to other functions;

(e) persons who participate in the carrying on of system operation functions do not participate in the carrying on of other functions;

(f) persons with access to information obtained in the carrying on of system operation functions do not have access to information obtained in the carrying on of other functions.

(6) The power conferred by subsection (1) may be exercised so as to impose a requirement on a person holding a transmission licence—

(a) to prepare annual reports about how measures within subsection (2) have been put in place for the year in question, and

(b) to submit such reports to either or both of the Secretary of State and the Authority.

(7) In this section—

"the Authority" means the Gas and Electricity Markets Authority;

"EMR functions" means functions conferred by or by virtue of—

(a) Chapter 1 (contracts for difference),

(b) Chapter 2 (investment instruments), or

(c) Chapter 3 (capacity market);

"functions" includes powers and duties;

"modify" includes amend, add to or repeal (and references to modifications are to be construed accordingly);

"transmission", "transmission licence" and "transmission system" have the same meaning as in Part 1 of the Electricity Act 1989.

33 Section 32: supplementary

(1) The power to make modifications conferred by section 32(1) ("the modification power")—

(a) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);

(b) may be exercised differently in different cases or circumstances;

(c) includes a power to make incidental, supplementary, consequential or transitional modifications.

(2) Provision included in a licence by virtue of the modification power—
(a) may make different provision for different cases;
(b) need not relate to the activities authorised by the licence;
(c) may do any of the things authorised by section 7(2A), (3) and (4) of the Electricity Act 1989 (which applies to the power of the Authority with respect to licence conditions under section 7(1)(a) of that Act).

(3) Before making a modification under the modification power, the Secretary of State must consult—
(a) the holder of any licence being modified,
(b) the Authority, and
(c) such other persons as the Secretary of State considers appropriate.

(4) Subsection (3) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

(5) The Secretary of State must publish details of any modifications as soon as reasonably practicable after they are made.

(6) If under the modification power the Secretary of State makes modifications of the standard conditions of a licence, the Authority must—
(a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
(b) publish the modification.

(7) A modification under the modification power of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the Electricity Act 1989.

(8) Sections 3A to 3D of the Electricity Act 1989 (principal objective and general duties) apply in relation to functions of the Secretary of State under this section and section 32 with respect to holders of licences under section 6(1) of that Act as they apply in relation to functions of the Secretary of State under Part 1 of that Act.

(9) In section 33(1)(g) of the Utilities Act 2000 (standard conditions of electricity licences), as inserted by section 17(11) of this Act, after "section 27" insert "or section 32".

(10) In section 137(3)(f) of the Energy Act 2004 (standard conditions of transmission licences under Part 1 of the Electricity Act 1989), as inserted by section 10 of this Act, after "section 27" insert "or section 32".

(11) In section 146(5) of the Energy Act 2004 (standard conditions for electricity interconnectors) after "section 27", as inserted by section 27(12) of this Act, insert "or section 32".

CHAPTER 5

CONTINGENCY ARRANGEMENTS

34 Power to transfer EMR delivery functions

(1) The Secretary of State may by order provide that EMR functions carried out by the national system operator are instead to be carried out by an alternative delivery body.

(2) "Alternative delivery body" means—
  (a) the Secretary of State, or
  (b) such other person specified in the order as the Secretary of State considers appropriate.

(3) A person may be specified under subsection (2)(b) only with the consent of that person.

(4) An order under subsection (1) may be made only if—
  (a) an energy administration order is in force in relation to the national system operator,
  (b) it appears to the Secretary of State necessary or desirable to make the order as a result of a change of ownership of the national system operator taking place after the coming into force of this section,
  (c) it appears to the Secretary of State that the national system operator is failing to carry out its EMR functions in an efficient and effective manner, or
  (d) it otherwise appears to the Secretary of State necessary or desirable to make the order in connection with furthering the purposes of—
    (i) Chapter 1 (see section 1(1)), or
    (ii) Chapter 3 (see section 20(1)).

(5) Where an EMR function has previously been transferred from the national system operator to an alternative delivery body by an order under subsection (1), the Secretary of State may by a further order provide that the function is instead to be carried out by—
  (a) a different alternative delivery body, or
  (b) the national system operator.

(6) An order under this section may relate—
  (a) to all EMR functions that the national system operator or the alternative delivery body is carrying out, or
  (b) only to such of those functions as are specified in the order.

(7) An order under this section may—
  (a) include incidental, supplementary and consequential provision;
  (b) make transitory or transitional provision and savings.

(8) Consequential provision made under subsection (7)(a) may amend, repeal or revoke any provision made by or under an Act, whenever passed or made (including this Act).

(9) An order under this section is to be made by statutory instrument.

(10) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(11) Schedule 1 (which confers power on the Secretary of State to make transfer schemes in connection with the making of orders under this section) has effect.

(12) In this section—

"EMR functions" are any functions conferred on the national system operator by or by virtue of Chapter 1 (contracts for difference) or Chapter 3 (capacity market);

"energy administration order" has the same meaning as in Chapter 3 of Part 3 of the Energy Act 2004 (see section 154(1) of that Act);

"national system operator" means the person operating the national transmission system for Great Britain (and for this purpose "transmission system" has the same meaning as in the Electricity Act 1989 - see section 4(4) of that Act).

CHAPTER 6

THE RENEWABLES OBLIGATION: TRANSITIONAL ARRANGEMENTS

35 Transition to certificate purchase scheme

(1) After section 32A of the Electricity Act 1989 insert—

"32AA The certificate purchase obligation

(1) The Secretary of State may make a certificate purchase order.

(2) A certificate purchase order is an order which imposes the certificate purchase obligation on the purchasing body.

(3) The purchasing body is—

(a) the Authority, or

(b) if the order so specifies, the Secretary of State.

(4) The certificate purchase obligation is that the purchasing body must pay the redemption value of a fixed price certificate to the person who presents it to the purchasing body for payment.

(5) Subsection (4) is subject to sections 32AB to 32M.

32AB Further provision about the certificate purchase obligation

(1) A certificate purchase order may make provision generally in relation to the certificate purchase obligation.

(2) A certificate purchase order may, in particular—

(a) specify the redemption value of fixed price certificates or provide for how the redemption value is to be calculated;

(b) provide for different redemption values for successive periods of time;

(c) authorise the adjustment of redemption values from time to time for inflation by a method specified in the order (including by reference to a specified scale or index, as it has effect from time to time, or to other specified data of any description);

(d) require the purchasing body or the Secretary of State (if not the purchasing body) to publish the redemption value of certificates by a specified deadline;

(e) provide for the manner in which a certificate is to be presented to the purchasing body;

(f) provide for the certificate purchase obligation in relation to certificates issued in respect of electricity generated—

(i) using specified descriptions of renewable sources,

(ii) by specified descriptions of generating stations,

(iii) in specified ways, or

(iv) in other specified cases or circumstances,

to apply only up to a specified number of the certificates that are presented for payment in any specified period;

(g) provide that fixed price certificates in respect of electricity generated—

(i) using specified descriptions of renewable sources,

(ii) by specified descriptions of generating stations,

(iii) in specified ways, or

(iv) in other specified cases or circumstances,

are to be issued only up to such number of certificates in any specified period as may be specified or determined in accordance with the order;

(h) provide that the certificate purchase obligation is not to apply on presentation of a fixed price certificate unless—

(i) the certificate is presented by such a deadline as may be specified or determined in accordance with the order, and

(ii) any other specified conditions are met (whether in relation to the certificate, the person presenting it or other matters);

(i) provide for how the purchasing body is to determine whether specified conditions are met;

(j) provide that the certificate purchase obligation in relation to a fixed price certificate is to be discharged by such a deadline as may be specified or determined in accordance with the order;

(k) authorise the purchasing body to determine the manner in which payments under the certificate purchase obligation are to be made;

(l) authorise the purchasing body to deduct from payments specified descriptions of fees or charges incurred in making the payments;

(m) provide for a certificate purchase levy (see section 32AC);

(n) authorise the Secretary of State to make payments for the purpose of enabling the certificate purchase obligation to be discharged;

(o) impose such other obligations, or confer such other functions, on the purchasing body as the Secretary of State considers appropriate.

(3) Once the redemption value in relation to a fixed price certificate is paid (less any deductions permitted under the order by virtue of subsection (2)(l)), the certificate purchase obligation in relation to that certificate is discharged (and the certificate is not to be presented for payment again).

(4) For the purposes of carrying out its functions under a certificate purchase order, the purchasing body may—

(a) require a person presenting a fixed price certificate to provide such information or documentation as the body may reasonably need for such purposes, and

(b) determine the form in which, and the time by which, such information or documentation is to be supplied.

(5) The certificate purchase obligation does not apply in relation to a fixed price certificate unless the person presenting the certificate has complied with any requirements imposed under subsection (4).

32AC Certificate purchase levy

(1) A certificate purchase order may provide for a certificate purchase levy to be charged in connection with the provision of payments to the purchasing body for the purpose of enabling the body to discharge the certificate purchase obligation.

(2) A certificate purchase levy is a levy—

(a) charged in respect of supplies of electricity that have been, or are expected to be, made in each specified period, and

(b) payable in respect of each such period by persons who make, or are expected to make, the supplies.

(3) The order may (without limiting the generality of section 32K(1)(d)) provide for different rates or different amounts of levy to be charged—

(a) in different cases or circumstances;

(b) in relation to different specified periods.

(4) The order may secure that the levy is not to be charged in respect of particular descriptions of supplies of electricity.

(5) The order may provide for amounts of the levy received in respect of any period to be applied for the purpose of discharging the certificate purchase obligation in another period.

(6) The order may, in particular, make provision about any of the following matters—

(a) what is a supply of electricity for the purposes of the levy;

(b) when a supply of electricity is, or is expected to be, made for those purposes;

(c) who makes, or is expected to make, a supply of electricity for those purposes;

(d) the rates or amounts of the levy, or how such rates or amounts are to be determined;

(e) payment of the levy, including deadlines for payment in respect of each period and interest in respect of late payment;

(f) administration of the levy;

(g) audit of information (whether by the administrator of the levy or a third party) including requirements for audits to be paid by the person whose information is subject to the audit;

(h) provision of information, including its provision to third parties in specified circumstances;

(i) enforcement of the levy;

(j) insolvency of persons liable to pay the levy;
(k) reviews and appeals;
(l) the functions of the administrator in connection with the levy.

(7) The administrator of the levy is—
(a) the Authority, or
(b) if the order so specifies, the Secretary of State.

(8) In a case where a person liable to pay the levy has made any overpayment or underpayment (whether arising because an estimate turns out to be wrong or otherwise), provision under subsection (6)(e) may require the amount of the overpayment or underpayment (including interest) to be set off against, or added to, any subsequent liability of the person to pay the levy.

(9) In a case where the amount received in respect of levy payments for a period falls short of the amount due for that period, provision under subsection (6)(e) or (j) may include a requirement on persons liable to pay the levy to make further payments, by the time and in the circumstances specified, of an amount calculated in the manner specified or determined in accordance with the order.

(10) Provision under subsection (6)(h) may provide for the administrator to determine the form in which any information that a person is required to give is to be given and the time by which it is to be given.

(11) Provision under subsection (6)(i) may—
(a) if the Authority is the administrator, apply sections 25 to 28 in relation to a requirement in respect of the levy imposed under the order on a person who is not a licence holder as if the person were a licence holder;
(b) if the Secretary of State is the administrator, include provision for the imposition of penalties if a requirement in respect of the levy is breached (whether financial or not, but not including the creation of criminal offences).

32AD Use of levy payments

(1) Amounts payable in respect of the certificate purchase levy are to be paid to the administrator of the levy.

(2) Amounts received by the administrator under subsection (1)—
(a) must be paid to the purchasing body in accordance with such provision as may be contained in the order, or
(b) if the administrator is also the purchasing body, are to be treated as paid to the purchasing body subject to such provision as may be contained in the order.

(3) Payments made (or treated as made) to the purchasing body under subsection (2) may be used by that body only for the purpose of discharging the certificate purchase obligation.

(4) The order may contain further provision about—
(a) the calculation of amounts received by the administrator that are to be paid to the purchasing body;
(b) the time by which the administrator must make payments of such amounts to the purchasing body;

(c) the manner in which any such payments are to be made.

(5) Subsections (2) to (4) are subject to subsection (6).

(6) The order may provide for amounts received by the administrator under subsection (1) to be used by the administrator to make payments into the Consolidated Fund—

(a) in respect of costs (or a proportion of costs) which have been or are expected to be incurred—

(i) by the administrator in connection with the performance of its functions conferred by or under sections 32AC to 32M, or

(ii) by the purchasing body in connection with the performance of its functions conferred by or under sections 32AA to 32M; or

(b) in accordance with such directions as may be given by the Secretary of State (in a case where the Secretary of State is not the administrator).

(7) The order—

(a) may exclude amounts of a specified description from being used as mentioned in subsection (6);

(b) may prevent the administrator using amounts to make payments in respect of costs of a specified description.

(8) In this section "the order", in relation to the certificate purchase levy, means the certificate purchase order that imposes the levy."

(2) Schedule 2 (the renewables obligation: certificate purchase scheme) has effect.

CHAPTER 7

EMISSIONS PERFORMANCE STANDARD

36 Duty not to exceed annual carbon dioxide emissions limit

(1) The operator of fossil fuel plant must secure that the emissions of carbon dioxide from it that are attributable to the use of fossil fuel do not exceed X tonnes of carbon dioxide ("the emissions limit") in any year, where—

$$X = RxCx7.446$$

and—

R is the statutory rate of emissions, in g/kWh;

C is the installed generating capacity, in MW, of the electricity generating station comprised in the fossil fuel plant.

(2) Until (and including) 2044, the statutory rate of emissions is 450 g/kWh.

(3) In this Chapter, "fossil fuel plant" means an electricity generating station which—

(a) is constructed pursuant to a relevant consent given or made on or after the date on which subsection (1) comes into force, and

(b) uses—

(i) fossil fuel, or

(ii) fuel produced by CCS plant,

together with any associated CCS plant.

(4) Subsection (1) is subject to—

(a) any order made under section 37, and

(b) any provision made by or under regulations made under subsection (5).

(5) The Secretary of State may by regulations—

(a) make provision about the interpretation of the duty imposed by subsection (1) ("the emissions limit duty");

(b) make any provision mentioned in Part 1 of Schedule 3 (application of emissions limit duty to additional cases or subject to modifications);

(c) make any provision mentioned in Part 2 of that Schedule (monitoring compliance with, and enforcement of, the emissions limit duty, and modification or suspension of the duty by enforcement authorities in particular circumstances).

(6) Regulations under subsection (5)(a) may, in particular, make provision—

(a) for determining the emissions from fossil fuel plant;

(b) for determining (whether by apportionment or otherwise) which such emissions are attributable to the use of fossil fuel;

(c) for the use of fossil fuel—

(i) for operating plant that is ancillary to a generating station for safety purposes or in an emergency, or

(ii) by a generating station when it is not generating any electricity that is conveyed from it by means of a transmission system or is distributed by means of a distribution system,

to be disregarded for any of the purposes of this Chapter;

(d) for determining when plant ceases to be, or to be part of, fossil fuel plant;

(e) specifying the meaning of any of the following expressions—

(i) "installed generating capacity";

(ii) "fuel produced by CCS plant";

(iii) "constructed pursuant to a relevant consent", in relation to an electricity generating station;

(f) specifying any category of emissions by reference to provision made by or under regulations for the time being implementing the ETS Directive;

in addition to any provision to be made by virtue of section 38.

(7) Provision that may be made by virtue of subsection (6)(b) includes provision for treating emissions attributable to the supply of heat to customers from combined heat and power plant as not being attributable to the use of fossil fuel.

37 Exception for CCS demonstration projects

(1) The Secretary of State may by order provide that, for the period specified in or determined in accordance with the order, section 36(1) is not to apply in relation to fossil fuel plant which is or includes—

(a) a specified generating station, or

(b) a generating station of a specified description.

(2) The Secretary of State may specify a generating station, or description of generating stations, in an order under subsection (1) only if satisfied that the station, or every station of that description, is a CCS project station.

(3) For this purpose—

"CCS project station" means a generating station at which carbon capture and storage technology is or is to be, or has been, used in commercial electricity generation for the purposes of or in connection with a CCS demonstration project;

"CCS demonstration project" means a project—

(a) to demonstrate and assess carbon capture and storage technology through its use in commercial electricity generation or to bring the technology into such use, and

(b) which is, or has been, or is to be, funded to any extent—

(i) by payments out of public funds (including payments provided directly or indirectly by any EU institution), or

(ii) directly or indirectly out of payments made by virtue of CFDs (within the meaning given by section 1) or investment instruments (within the meaning given by section 14);

"generating station" includes a proposed generating station.

(4) The Secretary of State—

(a) must issue (and may from time to time revise) a statement of the Secretary of State's policy in relation to making orders under this section,

(b) must publish the up-to-date text of the statement whenever it is issued or revised, and

(c) must have regard to the statement in making any order under this section.

(5) Before issuing or revising the statement, the Secretary of State must consult such persons as the Secretary of State thinks appropriate.

(6) Subsection (5) may be satisfied by consultation before, as well as after, the passing of this Act.

38 Interpretation of Chapter

In this Chapter—

"associated", in relation to CCS plant and an electricity generating station, has the meaning prescribed by regulations under section 36(5)(a);

"carbon capture and storage technology" means technology for doing, or contributing to the doing of, any of the following things—

(a) capturing carbon dioxide (or any substance consisting primarily of carbon dioxide) that has been produced by, or in connection with, commercial electricity generation;

(b) transporting such carbon dioxide (or substance) that has been captured;

(c) disposing of such carbon dioxide (or substance) that has been captured, by way of permanent storage;

"CCS plant" means plant that uses, or is capable of using, carbon capture and storage technology;

"commercial electricity generation" means generation of electricity, on a commercial scale;

"distribution system" has the meaning given by section 4(4) of the Energy Act 1989 (and "distributed" is to be read accordingly);

"emissions limit duty" means the duty imposed by section 36(1);

"ETS Directive" means Directive 2003/87/EC of the European Parliament and of the Council (as amended from time to time);

"fossil fuel" means—

(a) coal;

(b) lignite;

(c) peat;

(d) natural gas (within the meaning of the Energy Act 1976);

(e) crude liquid petroleum;

(f) bitumen;

(g) any substance which—

(i) is produced directly or indirectly from a substance mentioned in paragraphs (a) to (f) for use as a fuel, and

(ii) when burned, produces a greenhouse gas (within the meaning given in section 92 of the Climate Change Act 2008);

"operator" has the meaning prescribed by regulations under section 36(5)(a);

"relevant consent" means—

(a) consent granted under section 36 of the Electricity Act 1989 or Article 39 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992 No. 231 (N.I. 1)), or

(b) an order granting development consent under the Planning Act 2008;

"transmission system" has the meaning given by section 4(4) of the Electricity Act 1989;

"year" means any calendar year for which the emissions limit is defined by section 36.

39 Regulations and orders under Chapter 7

(1) Any order or regulations under this Chapter must be made by statutory instrument.

(2) An instrument containing regulations under section 36(5)(a) or (b) (whether or not also containing regulations under section 36(5)(c)) may not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament.

(3) Any other instrument containing regulations under section 36(5)(c) is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) An instrument containing an order under section 37 must be laid before Parliament after being made.

(5) If, but for this subsection, an instrument containing regulations under this Chapter would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

(6) Any order or regulations under this Chapter may—
- (a) make different provision for different cases or circumstances or for different purposes;
- (b) make provision subject to exceptions.

(7) Before making any regulations under section 36 or order under section 37, the Secretary of State must consult such persons as the Secretary of State thinks appropriate.

(8) Subsection (7) may be satisfied by consultation before, as well as after, the passing of this Act.

CHAPTER 8

STRATEGY AND POLICY STATEMENT

40 Designation of statement

(1) The Secretary of State may designate a statement as the strategy and policy statement for the purposes of this Chapter if the requirements set out in section 44 are satisfied (consultation and Parliamentary procedural requirements).

(2) The strategy and policy statement is a statement prepared by the Secretary of State that sets out—
- (a) the strategic priorities, and other main considerations, of Her Majesty's government in formulating its energy policy for Great Britain ("strategic priorities"),
- (b) the particular outcomes to be achieved as a result of the implementation of that policy ("policy outcomes"), and
- (c) the roles and responsibilities of persons (whether the Secretary of State, the Authority or other persons) who are involved in implementing that policy or who have other functions that are affected by it.

(3) The Secretary of State must publish the strategy and policy statement (including any amended statement following a review under section 43) in such manner as the Secretary of State considers appropriate.

(4) For the purposes of this section, energy policy "for Great Britain" includes such policy for—
- (a) the territorial sea adjacent to Great Britain, and
- (b) areas designated under section 1(7) of the Continental Shelf Act 1964.

(5) In this Chapter—
"the 1986 Act" means the Gas Act 1986;
"the 1989 Act" means the Electricity Act 1989;

"the Authority" means the Gas and Electricity Markets Authority;
"policy outcomes" has the meaning given in subsection (2)(b);
"strategic priorities" has the meaning given in subsection (2)(a);
"the strategy and policy statement" means the statement for the time being designated under subsection (1) as the strategy and policy statement for the purposes of this Chapter.

41 Duties in relation to statement

(1) The Authority must have regard to the strategic priorities set out in the strategy and policy statement when carrying out regulatory functions.

(2) The Secretary of State and the Authority must carry out their respective regulatory functions in the manner which the Secretary of State or the Authority (as the case may be) considers is best calculated to further the delivery of the policy outcomes.

(3) Subsection (2) is subject to the application of the principal objective duty in the carrying out of any such function.

(4) "Regulatory functions", in relation to the Secretary of State, means—
(a) functions of the Secretary of State under Part 1 of the 1986 Act or Part 1 of the 1989 Act;
(b) other functions of the Secretary of State to which the principal objective duty is applied by any enactment.

(5) "Regulatory functions", in relation to the Authority, means—
(a) functions of the Authority under Part 1 of the 1986 Act or Part 1 of the 1989 Act;
(b) other functions of the Authority to which the principal objective duty is applied by any enactment.

(6) The "principal objective duty" means the duty of the Secretary of State or (as the case may be) the Authority imposed by—
(a) section 4AA(1B) and (1C) of the 1986 Act;
(b) section 3A(1B) and (1C) of the 1989 Act.

(7) The Authority must give notice to the Secretary of State if at any time the Authority concludes that a policy outcome contained in the strategy and policy statement is not realistically achievable.

(8) A notice under subsection (7) must include—
(a) the grounds on which the conclusion was reached;
(b) what (if anything) the Authority is doing, or proposes to do, for the purpose of furthering the delivery of the outcome so far as reasonably practicable.

(9) In this section "enactment" includes—
(a) an enactment contained in this Act, and
(b) an enactment passed or made after the passing of this Act.

42 Exceptions from section 41 duties

(1) Section 41(1) and (2) do not apply in relation to functions of the Secretary of State under sections 36 to 37 of the 1989 Act.

(2) Section 41(1) and (2) do not apply in relation to anything done by the Authority—

(a) in the exercise of functions relating to the determination of disputes;

(b) in the exercise of functions under section 36A(3) of the 1986 Act or section 43(3) of the 1989 Act.

(3) The duties imposed by section 41(1) and (2) do not affect the obligation of the Authority or the Secretary of State to perform or comply with any other duty or requirement (whether arising under this Act or another enactment, by virtue of any EU obligation or otherwise).

43 Review

(1) The Secretary of State must review the strategy and policy statement if a period of 5 years has elapsed since the relevant time.

(2) The "relevant time", in relation to the strategy and policy statement, means—

(a) the time when the statement was first designated under this Chapter, or

(b) if later, the time when a review of the statement under this section last took place.

(3) A review under subsection (1) must take place as soon as reasonably practicable after the end of the 5 year period.

(4) The Secretary of State may review the strategy and policy statement at any other time if—

(a) a Parliamentary general election has taken place since the relevant time,

(b) the Authority has given notice to the Secretary of State under section 41(7) since the relevant time,

(c) a significant change in the energy policy of Her Majesty's government has occurred since the relevant time, or

(d) the Parliamentary approval requirement to an amended statement was not met on the last review (see subsection (12)).

(5) The Secretary of State may determine that a significant change in the government's energy policy has occurred for the purposes of subsection (4)(c) only if—

(a) the change was not anticipated at the relevant time, and

(b) if the change had been so anticipated, it appears to the Secretary of State likely that the statement would have been different in a material way.

(6) On a review under this section the Secretary of State may—

(a) amend the statement (including by replacing the whole or part of the statement with new content),

(b) leave the statement as it is, or

(c) withdraw the statement's designation as the strategy and policy statement.

(7) The amendment of a statement under subsection (6)(a) has effect only if the Secretary of State designates under section 40 the amended statement as the strategy and policy statement (and the procedural requirements under section 44 apply in relation to any such designation).

(8) For the purposes of this section, corrections of clerical or typographical errors are not to be treated as amendments made to the statement.

(9) The designation of a statement as the strategy and policy statement ceases to have effect upon a subsequent designation of an amended statement as the strategy and policy statement in accordance with subsection (7).

(10) The Secretary of State must consult the following persons before proceeding under subsection (6)(b) or (c)—

(a) the Authority,
(b) the Scottish Ministers,
(c) the Welsh Ministers, and
(d) such other persons as the Secretary of State considers appropriate.

(11) For the purposes of subsection (2)(b), a review of a statement takes place—

(a) in the case of a decision on the review to amend the statement under subsection (6)(a)—
(i) at the time when the amended statement is designated as the strategy and policy statement under section 40, or
(ii) if the amended statement is not so designated, at the time when the amended statement was laid before Parliament for approval under section 44(8);
(b) in the case of a decision on the review to leave the statement as it is under subsection (6)(b), at the time when that decision is taken.

(12) For the purposes of subsection (4)(d), the Parliamentary approval requirement to an amended statement was not met on the last review if—

(a) on the last review of the strategy and policy statement to be held under this section, an amended statement was laid before Parliament for approval under section 44(8), but
(b) the amended statement was not designated because such approval was not given.

44 Procedural requirements

(1) This section sets out the requirements that must be satisfied in relation to a statement before the Secretary of State may designate it as the strategy and policy statement.

(2) In this section references to a statement include references to a statement as amended following a review under section 43(6)(a).

(3) The Secretary of State must first—

(a) prepare a draft of the statement, and
(b) issue the draft to the required consultees for the purpose of consulting them about it.

(4) The "required consultees" are—

(a) the Authority,
(b) the Scottish Ministers, and
(c) the Welsh Ministers.

(5) The Secretary of State must then—

(a) make such revisions to the draft as the Secretary of State considers appropriate as a result of responses to the consultation under subsection (3)(b), and

(b) issue the revised draft for the purposes of further consultation about it to the required consultees and to such other persons as the Secretary of State considers appropriate.

(6) The Secretary of State must then—

(a) make any further revisions to the draft that the Secretary of State considers appropriate as a result of responses to the consultation under subsection (5)(b), and

(b) prepare a report summarising those responses and the changes (if any) that the Secretary of State has made to the draft as a result.

(7) The Secretary of State must lay before Parliament—

(a) the statement as revised under subsection (6)(a), and

(b) the report prepared under subsection (6)(b).

(8) Each House of Parliament must have passed a resolution approving of the statement as laid under subsection (7)(a) before the Secretary of State may designate it as the strategy and policy statement under section 40.

(9) The requirement under subsection (3)(a) to prepare a draft of a statement may be satisfied by preparation carried out before, as well as preparation carried out after, the passing of this Act.

45 Principal objective and general duties in preparation of statement

(1) Sections 4AA to 4B of the 1986 Act (principal objective and general duties) apply in relation to the relevant function of the Secretary of State under this Chapter as they apply in relation to functions of the Secretary of State under Part 1 of that Act.

(2) Sections 3A to 3D of the 1989 Act (principal objective and general duties) apply in relation to the relevant function of the Secretary of State under this Chapter as they apply in relation to functions of the Secretary of State under Part 1 of that Act.

(3) The "relevant function" is the Secretary of State's function of determining the policy outcomes to be set out in the strategy and policy statement (whether when the statement is first prepared under this Chapter or when it is reviewed under section 43).

46 Reporting requirements

(1) The Utilities Act 2000 is amended as follows.

(2) After section 4 insert—

"4A Information in relation to strategy and policy statement

(1) As soon as reasonably practicable after the designation of a statement as the strategy and policy statement, the Authority must publish a document setting out the required information in relation to the statement.

(2) The Authority must include the required information in relation to a strategy and policy statement in the forward work programme for each financial year, subject to making such modifications to the information

as the Authority thinks appropriate from the version as last published under this subsection.

(3) The required information in relation to a strategy and policy statement to be set out in a document or forward work programme is—

(a) the strategy the Authority intends to adopt for the purpose of furthering the delivery of the policy outcomes contained in the statement (both in respect of the year in or for which the document or programme is issued and beyond);

(b) the things the Authority proposes to do in implementing that strategy (including when the Authority proposes to do them);

(c) the ways in which the Authority has had regard to the strategic priorities contained in the statement in setting out the information required under paragraphs (a) and (b).

(4) The duty under subsection (1) does not apply if—

(a) the Authority does not think it reasonably practicable to publish the document mentioned in that subsection before the time when the Authority is next required to publish a forward work programme, and

(b) the Authority includes the required information in that forward work programme.

(5) The duty under subsection (2) does not apply in relation to the first financial year beginning after the designation of the statement if—

(a) the Authority does not think it reasonably practicable to include the required information in the forward work programme for that year, and

(b) the Authority includes the required information in a document published under subsection (1).

(6) The duty under subsection (2) does not apply in relation to a financial year if the Secretary of State gives notice to the Authority under this subsection that the statement's designation—

(a) will be withdrawn before the beginning of the year, or

(b) is expected to have been withdrawn before the beginning of the year.

(7) Subsections (4) to (6) of section 4 (notice requirements) apply to a document published under subsection (1) as they apply to a forward work programme.

(8) In this section—

"designation", in relation to a strategy and policy statement, means designation of the statement by the Secretary of State under Chapter 8 of Part 1 of the Energy Act 2012;

"forward work programme" has the meaning given by section 4(1);

"policy outcomes", "strategic priorities" and "strategy and policy statement" have the same meaning as in Chapter 8 of Part 1 of the Energy Act 2012."

(3) In section 5 (annual and other reports of Authority), after subsection (2) insert—

"(2A) The annual report for each year shall also include a report on—

(a) the ways in which the Authority has carried out its duties under section 41(1) and (2) of the Energy Act 2012 in relation to the strategy and policy statement (so far as the statement's designation was in effect during the whole or any part of the year), and

(b) the extent to which the Authority has done the things set out under section 4A in a forward work programme or other document as the things the Authority proposed to do during that year in implementing its strategy for furthering the delivery of the policy outcomes contained in the statement (see subsection (3)(b) of that section).

(2B) The report mentioned in subsection (2A) must, in particular, include—

(a) the Authority's assessment of how the carrying out of its functions during the year has contributed to the delivery of the policy outcomes contained in the strategy and policy statement, and

(b) if the Authority has failed to do any of the things mentioned in subsection (2A)(b), an explanation for the failure and the actions the Authority proposes to take to remedy it.

(2C) In subsections (2A) and (2B)—

"forward work programme" has the meaning given by section 4(1);

"policy outcomes" and "strategy and policy statement" have the same meaning as in Chapter 8 of Part 1 of the Energy Act 2012."

47 Consequential provision

(1) The following provisions are repealed (guidance about the making by the Authority of a contribution towards the attainment of social or environmental policies)—

(a) sections 4AB and 4B(1) of the 1986 Act, and

(b) sections 3B and 3D(1) of the 1989 Act.

(2) In section 4AA(5) of the 1986 Act, after "(2)," insert "and to section 41(2) of the Energy Act 2012 (duty to carry out functions in manner best calculated to further delivery of policy outcomes)".

(3) In section 3A(5) of the 1989 Act, after "(2)," insert "and to section 41(2) of the Energy Act 2012 (duty to carry out functions in manner best calculated to further delivery of policy outcomes)".

PART 2

NUCLEAR REGULATION

CHAPTER 1

THE ONR'S PURPOSES

48 The ONR's purposes

In this Part, "the ONR's purposes" means—

(a) the nuclear safety purposes (see section 49),

(b) the nuclear site health and safety purposes (see section 50),
(c) the nuclear security purposes (see section 51),
(d) the nuclear safeguards purposes (see section 53), and
(e) the transport purposes (see section 54).

49 Nuclear safety purposes

(1) In this Part, the "nuclear safety purposes" means the purposes of protecting persons against risks of harm from ionising radiations from licensed nuclear sites, including through—
(a) the design and construction of relevant nuclear installations and associated sites,
(b) arrangements for the operation and decommissioning of, and other processes connected with, relevant nuclear installations,
(c) arrangements for the storage and use of nuclear matter on licensed nuclear sites, and
(d) arrangements to minimise those risks in the event of an escape or release of such ionising radiations.

(2) For this purpose, ionising radiations from licensed nuclear sites are ionising radiations from—
(a) relevant nuclear installations, or
(b) nuclear matter stored or used on a licensed nuclear site;
and an escape or release of ionising radiations from a licensed nuclear site includes ionising radiations from nuclear matter that has escaped or been released on or from a licensed nuclear site.

(3) In this section—
"licensed nuclear site" means a site in England, Wales or Scotland in respect of which—
(a) a nuclear site licence is in force, or
(b) a period of responsibility has not ended;
"nuclear installation" has the same meaning as in the Nuclear Installations Act 1965 (see section 26 of that Act);
"nuclear matter" has the same meaning as in that Act (see section 26 of that Act);
"nuclear site licence" has the same meaning as in that Act (see section 1 of that Act);
"period of responsibility", in relation to a site, means the period of responsibility (within the meaning given in section 5 of that Act) in respect of a nuclear site licence granted at any time in respect of the site;
"relevant nuclear installation" means a nuclear installation on a site in England, Wales or Scotland for which a nuclear site licence is required by virtue of the installation (and includes a proposed or former nuclear installation in respect of which such a licence would be or has ever been so required).

50 Nuclear site health and safety purposes

(1) In this Part, the "nuclear site health and safety purposes" means so much of the general purposes of Part 1 of the Health and Safety at Work etc. Act 1974 as consists of the following purposes—

(a) securing the health, safety and welfare of persons at work on licensed nuclear sites;

(b) protecting persons, other than persons at work on licensed nuclear sites, against risks to health or safety arising out of or in connection with the activities of persons at work on licensed nuclear sites;

(c) controlling the storage and use on licensed nuclear sites of nuclear matter or other radioactive, explosive or highly flammable or otherwise dangerous substances, and generally preventing the unlawful acquisition, possession and use of such matter or substances on or from such sites.

(2) In this section "licensed nuclear site" and "nuclear matter" have the same meanings as in section 49.

(3) The following apply for the purposes of this section as they apply for the purposes of Part 1 of the Health and Safety at Work etc. Act 1974—

(a) section 1(3) of that Act (interpretation of references to risks relating to persons at work);

(b) section 52(1) of that Act (meaning of "work" and "at work");

(c) the power conferred by section 52(2)(a) of that Act to extend the meaning of "work" and "at work".

51 Nuclear security purposes

(1) In this Part, the "nuclear security purposes" means the purposes of ensuring the security of—

(a) nuclear premises;

(b) nuclear material used or stored on nuclear premises and equipment or software used or stored on such premises in connection with activities involving nuclear material;

(c) other radioactive material used or stored on nuclear sites and equipment or software used or stored on nuclear sites in connection with activities involving other radioactive material;

(d) nuclear construction sites and equipment used or stored on nuclear sites;

(e) equipment or software in the United Kingdom which—

(i) is capable of being used in, or in connection with, the enrichment of uranium; and

(ii) is in the possession or control of a person involved in uranium enrichment activities;

(f) sensitive nuclear information which is in the possession or control in the United Kingdom of—

(i) a person who is involved in activities on or in relation to nuclear premises or who is proposing or likely to become so involved;

(ii) a person involved in uranium enrichment activities; or

(iii) a person who is storing, transporting or transmitting the information for or on behalf of a person falling within sub-paragraph (i) or (ii);

(g) nuclear material which is being (or is expected to be)—

(i) transported within the United Kingdom or its territorial sea;

(ii) transported (outside the United Kingdom and its territorial sea) to or from any nuclear premises in the United Kingdom; or

(iii) carried on board a United Kingdom ship;

(h) information relating to the security of anything mentioned in paragraphs (a) to (g).

(2) For the purposes of subsection (1), ensuring the security of any site or premises includes doing so by means of the design of, or of anything on, the site or premises.

(3) In this section—

"enrichment of uranium" means a treatment of uranium that increases the proportion of isotope 235 contained in the uranium;

"equipment" includes equipment that has not been assembled and its components;

"nuclear construction site" means a site—

(a) on which works are being carried out with a view to its becoming a nuclear site used wholly or mainly for purposes other than defence purposes, and

(b) which is situated within 5 kilometres of an existing nuclear site;

"nuclear material" means any fissile material in the form of—

(a) uranium metal, alloy or compound, or

(b) plutonium metal, alloy or compound,

or any other fissile material prescribed by regulations made by the Secretary of State;

"nuclear premises" means—

(a) a nuclear site, or

(b) other premises on which nuclear material is used or stored;

"nuclear site" means a site in respect of which a nuclear site licence (within the meaning of the Nuclear Installations Act 1965 (see section 1 of that Act)) is or is required to be in force;

"sensitive nuclear information" means—

(a) information relating to, or capable of use in connection with, the enrichment of uranium, or

(b) information of a description for the time being specified in a notice under section 52;

"United Kingdom ship" means a ship registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995.

(4) The Secretary of State may by regulations modify the definition of "nuclear material" in subsection (3).

52 Notice by Secretary of State to ONR specifying sensitive nuclear information

(1) This section applies where the Secretary of State considers that information of any description relating to activities carried out on or in relation to nuclear premises is information which needs to be protected in the interests of national security.

(2) The Secretary of State may give a notice to the ONR under this section specifying that description of information.

(3) The Secretary of State may vary or revoke any notice given under this section by giving a further notice to the ONR.

(4) Before giving a notice under this section, the Secretary of State must consult the ONR.

(5) In this section "nuclear premises" has the same meaning as in section 51.

53 Nuclear safeguards purposes

(1) In this Part, the "nuclear safeguards purposes" means the purposes of—
  (a) ensuring compliance by the United Kingdom or, as the case may be, enabling or facilitating compliance by a Minister of the Crown, with the safeguards obligations, and
  (b) the development of any future safeguards obligations.

(2) In subsection (1)(a) "the safeguards obligations" has the meaning given by section 74.

54 Transport purposes

(1) In this Part, the "transport purposes" means the purposes of—
  (a) protecting against risks relating to the transport of radioactive material in Great Britain by road, rail or inland waterway which arise out of, or in connection with, the radioactive nature of the material, and
  (b) ensuring the security of radioactive material during transport in Great Britain by road, rail or inland waterway.

(2) For this purpose—
  (a) "radioactive material"—
    (i) in relation to transport by road, has the same meaning as in ADR,
    (ii) in relation to transport by rail, has the same meaning as in RID, and
    (iii) in relation to transport by inland waterway, has the same meaning as in ADN;
  (b) the transport of material begins with any preparatory process (such as packaging) and continues until the material has been unloaded at its destination.

(3) In subsection (2)(a)—
  "ADN" means the Regulations annexed to the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterway (signed at Geneva on 26 May 2000);
  "ADR" means Annexes A and B to the European Agreement concerning the International Carriage of Dangerous Goods by Road (signed at Geneva on 30 September 1957);
  "RID" means the Annex to Appendix C to the Convention concerning International Carriage by Rail (signed at Berne on 9 May 1980) (the Regulation concerning the International Carriage of Dangerous Goods by Rail);
  and any reference to, or to an appendix to, an Agreement, a Convention or a Treaty, or to an annex to any of them, is to it as it has effect for the time being.

(4) The Secretary of State may by regulations modify the definition of "radioactive material".

CHAPTER 2

NUCLEAR REGULATIONS

55 Nuclear regulations

(1) The Secretary of State may make regulations ("nuclear regulations") for any of the following purposes—

(a) the nuclear safety purposes;

(b) the nuclear security purposes;

(c) the nuclear safeguards purposes;

(d) the transport purposes.

(2) Any nuclear regulations are to be made in accordance with section 57.

(3) Nuclear regulations may, in particular, for any of the purposes mentioned in subsection (1), make provision for any of the purposes mentioned in Schedule 4.

(4) Nuclear regulations may—

(a) modify—

(i) any of the provisions of the Nuclear Installations Act 1965 that are relevant statutory provisions;

(ii) any provision of health and safety regulations (within the meaning of Part 1 of the Health and Safety at Work etc. Act 1974), whenever made;

(b) confer functions on the ONR;

(c) specify powers which may be conferred on inspectors by their instruments of appointment under paragraph 2 of Schedule 6;

(d) create offences triable either way or summary offences;

(e) impose requirements by reference to the approval or a determination of the Secretary of State or any other specified body or person;

(f) provide for exemptions to be granted from any of the relevant statutory provisions by any specified person or by any person authorised by any specified authority;

(g) provide for references in the regulations to any specified document to operate as references to that document as revised or re-issued from time to time.

(5) An offence under nuclear regulations may be made punishable—

(a) in the case of an offence triable either way—

(i) on conviction on indictment, with imprisonment for a term not exceeding 2 years, or a fine, or both; and

(ii) on summary conviction, with imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland), or a fine not exceeding £20,000, or both, or

(b) in the case of a summary offence, with imprisonment for a term not exceeding 51 weeks (in England and Wales), 12 months (in Scotland) or 6 months (in Northern Ireland), or a fine not exceeding level 5 on the standard scale, or both.

(6) Subsection (5), so far as it enables nuclear regulations to make provision for England and Wales, is to be read—

(a) in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's power to imprison), as if the reference to 12 months in paragraph (a)(ii) were a reference to 6 months, and

(b) in relation to an offence committed before the commencement of section 281(5) of that Act (alteration of penalties for summary offences), as if the reference to 51 weeks in paragraph (b) were a reference to 6 months.

(7) Nuclear regulations may make provision—

(a) applying to acts done outside the United Kingdom by United Kingdom persons;

(b) for enabling offences under any of the relevant statutory provisions to be treated as having been committed at any specified place for the purpose of conferring jurisdiction on any court to entertain proceedings for any such offence.

(8) In subsection (7) "United Kingdom person" means a United Kingdom national, a Scottish partnership or a body incorporated under the law of any part of the United Kingdom.

(9) For this purpose a United Kingdom national is an individual who is—

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,

(b) a person who under the British Nationality Act 1981 is a British subject, or

(c) a British protected person within the meaning of that Act.

(10) Nuclear regulations which include any provisions to which subsection (11) applies must identify those provisions as such.

(11) This subsection applies to any provisions of nuclear regulations which are made for—

(a) the nuclear security purposes,

(b) the nuclear safeguards purposes, or

(c) both of those purposes,

and for no other purpose.

(12) In this section (and Schedule 4) "specified" means specified in nuclear regulations.

56 Civil liability for breach of nuclear regulations

(1) Breach of a duty imposed by nuclear regulations is actionable to the extent that it causes damage (and whether or not the breach constitutes an offence).

(2) Any term of an agreement is void to the extent that it purports to exclude or restrict—

(a) the operation of subsection (1), or

(b) any liability arising by virtue of that subsection.

(3) Nuclear regulations may provide—

(a) for subsection (1) or (2) not to apply in specified circumstances;

(b) for any specified defence to be available in any action under subsection (1).

(4) Nothing in subsection (1) or (3)(b) affects any right of action or defence which otherwise exists or may be available.

(5) In this section—

"damage" includes the death of any person or any harm to health;

"specified" means specified in nuclear regulations.

57 Nuclear regulations: procedure

(1) The Secretary of State may exercise the power in section 55—

(a) so as to give effect (with or without modifications) to proposals submitted by the ONR under section 61(1), or

(b) independently of such proposals.

(2) Before exercising the power in section 55 to make nuclear regulations, the Secretary of State must consult—

(a) the ONR,

(b) if the regulations would modify any provision of health and safety regulations (within the meaning of Part 1 of the Health and Safety at Work etc. Act 1974), the Health and Safety Executive, and

(c) such other persons (if any) as appear to the Secretary of State to be appropriate.

(3) Subsection (2)(a) does not apply where the Secretary of State proposes to exercise the power in section 55 so as to give effect without modification to proposals submitted by the ONR under section 61(1).

CHAPTER 3

OFFICE FOR NUCLEAR REGULATION

58 The Office for Nuclear Regulation

(1) There is to be a body corporate known as the Office for Nuclear Regulation.

(2) In this Part that body is referred to as "the ONR".

(3) Schedule 5 makes further provision about the ONR.

CHAPTER 4

FUNCTIONS OF THE ONR

Functions of ONR: general

59 Principal function

(1) The ONR must do whatever it considers appropriate for the ONR's purposes.

(2) That includes, so far as it considers appropriate, assisting and encouraging others to further those purposes.

60 Codes of practice

(1) The ONR may, with the appropriate consent, issue codes of practice giving practical guidance as to the requirements of any provision of—

(a) the relevant statutory provisions,

(b) section 7 of the Health and Safety at Work etc. Act 1974 (general duties of employees at work) so far as it relates to the relevant statutory provisions, or

(c) health and safety regulations made for the nuclear site health and safety purposes.

(2) The ONR may, with the appropriate consent, revise or withdraw a code of practice issued under this section.

(3) In subsections (1) and (2), "the appropriate consent" means—

(a) the consent of the Secretary of State, and

(b) if the code of practice relates to health and safety regulations, the consent of the Health and Safety Executive.

(4) Before seeking the consent of the Secretary of State under subsection (1) or (2), the ONR must consult—

(a) any government department or other person that the Secretary of State has directed the ONR to consult, and

(b) any other government department or other person that the ONR considers appropriate.

(5) A direction under subsection (4)(a) may be general or may relate to a particular code, or codes of a particular kind.

(6) The ONR must—

(a) publish any code of practice issued under this section;

(b) when it revises such a code, publish a copy of the revised code;

(c) when it withdraws such a code, publish a notice to that effect.

This is subject to section 75.

(7) A person's failure to observe any provision of an approved code of practice does not of itself make the person liable to any civil or criminal proceedings.

(8) But—

(a) an approved code of practice is admissible in evidence in criminal proceedings, and

(b) failure to observe a provision of an approved code of practice must be taken into account by a court in any criminal proceedings relating to a contravention of a provision mentioned in subsection (1) in which it appears to the court to be relevant.

(9) References in this Part to an approved code of practice are references to a code issued under this section as it has effect for the time being.

61 Proposals about orders and regulations

(1) The ONR may from time to time—

(a) submit proposals to the Secretary of State for—

(i) nuclear regulations,

(ii) regulations under section 81,

(iii) health and safety fees regulations, or
(iv) orders or regulations under a relevant enactment;

(b) submit proposals to the Health and Safety Executive for relevant health and safety regulations.

(2) In this section—

"health and safety fees regulations" means regulations under section 43 of the Health and Safety at Work etc. Act 1974 in relation to fees payable for or in connection with the performance of a function by or on behalf of—

(a) the ONR, or
(b) any inspector appointed by the ONR under section 19 of that Act;

"relevant enactment" means—

(a) section 3 of the Nuclear Safeguards and Electricity (Finance) Act 1978 (regulations for giving effect to certain provisions of Safeguards Agreement);
(b) section 3 of the Nuclear Safeguards Act 2000 (identifying persons who have information);
(c) section 5(3) of that Act (rights of access for Agency inspectors);
(d) section 80 of the Anti-terrorism, Crime and Security Act 2001 (prohibition of disclosures of uranium enrichment technology);

"relevant health and safety regulations" means regulations under section 15 of the Health and Safety at Work etc. Act 1974 so far as they can be made for the nuclear site health and safety purposes.

(3) Before submitting any such proposal, the ONR must consult—

(a) any government department or other person that the Secretary of State has directed the ONR to consult, and
(b) any other government department or other person that the ONR considers appropriate.

(4) A direction under subsection (3)(a) may be general or may relate to a particular proposal, or to proposals of a particular kind.

62 Enforcement of relevant statutory provisions

(1) The ONR must make adequate arrangements for the enforcement of the relevant statutory provisions.

(2) In this Part, "relevant statutory provisions" means—

(a) the provisions of or made under—
this Part, or
the following sections of the Nuclear Installations Act 1965—
section 1;
sections 3 to 6;
section 22;
section 24A; and
(b) the provisions of the Nuclear Safeguards Act 2000.

63 Inspectors

Schedule 6 (appointment and powers of inspectors) has effect.

64 Investigations

(1) The ONR may—
  (a) investigate and make a report ("a special report") on any relevant matter, or
  (b) authorise another person to do so.

(2) The ONR may publish or arrange for the publication of—
  (a) a special report, or
  (b) so much of a special report as the ONR considers appropriate.

This is subject to section 75.

(3) In this section "relevant matter" means any accident, occurrence, situation or other matter which the ONR considers it necessary or desirable to investigate—
  (a) for any of the ONR's purposes, or
  (b) with a view to the making of—
    (i) nuclear regulations, or
    (ii) regulations under section 15 of the Health and Safety at Work etc. Act 1974 (health and safety regulations) so far as they can be made for the nuclear site health and safety purposes.

(4) The ONR may pay such remuneration, expenses and allowances as it may determine to a person who—
  (a) is not a member or member of staff of the ONR, and
  (b) investigates a relevant matter or makes a special report under subsection (1), or assists in doing so.

(5) The ONR may make such payments as it may determine to meet the other costs (if any) of an investigation or special report under subsection (1).

(6) The ONR must consult the Office of Rail Regulation before taking any step under subsection (1) in relation to a matter which appears to the ONR to be, or likely to be, relevant to the railway safety purposes (within the meaning given in paragraph 1 of Schedule 3 to the Railways Act 2005).

65 Inquiries

(1) The ONR may, with the consent of the Secretary of State, direct an inquiry to be held into any matter if it considers the inquiry necessary or desirable for any of the ONR's purposes.

(2) In this Part "ONR inquiry" means an inquiry under this section.

(3) An ONR inquiry must be held in accordance with regulations made by the Secretary of State.

(4) Except as provided by the regulations—
  (a) an ONR inquiry is to be held in public; and
  (b) any report made by the person holding an ONR inquiry is to be published.

(5) The regulations may in particular make provision—
  (a) conferring on the person holding an ONR inquiry and any person assisting that person—
    (i) powers of entry and inspection;

(ii) powers of summoning witnesses to give evidence or produce documents;
(iii) power to take evidence on oath and to administer oaths;
(iv) power to require the making of declarations;

(b) as to circumstances in which—
(i) an ONR inquiry or any part of it is to be held in private;
(ii) any report, or part of a report, made by the person holding an ONR inquiry is not to be published;

(c) conferring functions on the ONR or the Secretary of State (which may include the exercise of a discretion);

(d) creating summary offences.

(6) An offence under the regulations may be made punishable with a fine not exceeding level 5 on the standard scale.

(7) The ONR may submit proposals to the Secretary of State for regulations under this section.

(8) Subsection (9) applies where—
(a) the ONR directs an ONR inquiry to be held into a matter arising in Scotland, and
(b) the matter in question causes the death of a person.

(9) Unless the Lord Advocate otherwise directs, no inquiry is to be held with regard to the death of that person under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.

66 Inquiries: payments and charges

(1) The ONR may pay such remuneration, expenses and allowances as it may determine to—
(a) a person holding an ONR inquiry;
(b) any assessor appointed to assist a person holding an ONR inquiry.

(2) The ONR may pay to persons attending an ONR inquiry as witnesses such expenses as it may determine.

(3) The ONR may make such payments as it may determine to meet the other costs (if any) of an ONR inquiry.

(4) The ONR may require such person or persons to make such payments to it as it considers appropriate in connection with an ONR inquiry.

(5) The aggregate of the payments required under subsection (4) must not exceed the ONR's costs that are attributable to the ONR inquiry.

(6) No payment may be required under subsection (4) except with the consent of the Secretary of State.

67 Inquiries: restrictions on disclosure of information

(1) Subsection (2) applies to information obtained by a person ("P") as a result of the exercise of any power conferred on P under section 65(5)(a), including in particular information with respect to any trade secret obtained on premises entered by P by virtue of any such power.

(2) Information to which this subsection applies must not be disclosed except—
  (a) for the purposes of P's functions,
  (b) for the purposes of any legal proceedings, ONR inquiry, or investigation held by virtue of section 64,
  (c) for the purposes of any report of any such proceedings or ONR inquiry or of a special report made under section 64,
  (d) with the consent of the person having responsibilities in relation to the premises where P obtained the information,
  (e) in accordance with an obligation under the Freedom of Information Act 2000, or
  (f) in accordance with subsection (3).

(3) P may provide to a person who appears to P to be likely to be a party to any civil proceedings arising out of any accident, occurrence, situation or other matter a written statement of relevant facts observed by P in the course of exercising any power conferred on P under section 65(5)(a).

(4) The prohibition in subsection (2) is to be disregarded for the purposes of section 44 of the Freedom of Information Act 2000 (prohibitions on disclosure).

(5) It is an offence for a person to disclose information in contravention of this section.

(6) A person who commits an offence under subsection (5) is liable—
  (a) on summary conviction to—
    (i) imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland),
    (ii) a fine not exceeding the statutory maximum, or
    (iii) both;
  (b) on conviction on indictment to—
    (i) imprisonment for a term not exceeding 2 years,
    (ii) a fine, or
    (iii) both.

(7) In the application of subsection (6) to England and Wales in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's power to imprison), the reference in subsection (6)(a)(i) to 12 months is to be read as a reference to 6 months.

Other functions

68 Provision of information

(1) The ONR must make such arrangements as it considers appropriate for providing information that it holds that is relevant to the ONR's purposes.

(2) Arrangements that may be made under subsection (1) are arrangements of any description, including arrangements—
  (a) for providing information to any person or category of persons (whether or not concerned with matters relevant to the ONR's purposes);
  (b) for providing information on request or on the ONR's initiative;
  (c) for providing only such information as the ONR considers appropriate.

(3) Nothing in this section is to be taken—

(a) to permit the disclosure of information whose disclosure is prohibited under section 80,

(b) to affect the obligations of the ONR under the Freedom of Information Act 2000, or

(c) to require the disclosure of information which the ONR would not be required to disclose under—

(i) that Act, or

(ii) environmental information regulations within the meaning given in section 39(1A) of that Act.

69 Research, training etc

(1) The ONR—

(a) may carry out research in connection with the ONR's purposes, or arrange for such research to be carried out on its behalf, and

(b) must, if it considers it appropriate to do so, publish the results of any such research or arrange for them to be published.

(2) The ONR may make payments for research to be carried out in connection with the ONR's purposes and for the dissemination of information derived from such research.

(3) The ONR may provide, or make arrangements for the provision of, training to any person in connection with the ONR's purposes.

(4) Arrangements under subsection (3) may include provision for payments to be made to the ONR by or on behalf of—

(a) other parties to the arrangements,

(b) persons to whom the training is provided.

(5) This section is subject to section 75.

70 Provision of information or advice to relevant authorities

(1) The ONR must, on request, provide a relevant authority with relevant information or relevant advice.

(2) Relevant information is information about the ONR's activities which is requested—

(a) in the case of information requested by a Minister of the Crown—

(i) for the purpose of monitoring the ONR's performance of its functions, or

(ii) for the purpose of any proceedings in Parliament,

(b) in any case, in connection with any matter with which the relevant authority requesting it is concerned.

(3) The reference in subsection (2) to the ONR's activities includes a reference to the activities of inspectors appointed by the ONR under—

(a) Schedule 6, or

(b) section 19 of the Health and Safety at Work etc. Act 1974,

in their capacity as such inspectors.

(4) Relevant advice is advice on a matter with which the relevant authority requesting it is concerned where the matter—
  (a) is relevant to the ONR's purposes, or
  (b) is one on which expert advice is obtainable from any member, employee or other member of staff of the ONR.

(5) The ONR may require a relevant authority to whom information is provided under subsection (1) to pay a fee in respect of the ONR's costs reasonably incurred in providing the authority with—
  (a) relevant information requested under subsection (2)(b), or
  (b) relevant advice.

(6) The Secretary of State may by regulations provide that subsection (5) is not to apply in particular cases or classes of case or in particular circumstances.

(7) The duty under subsection (1) is in addition to any other duty or power of the ONR to provide information or advice.

(8) In this section "relevant authority" means any of the following—
  (a) a Minister of the Crown;
  (b) the Scottish Ministers;
  (c) the Welsh Ministers;
  (d) a Northern Ireland Department;
  (e) the Health and Safety Executive;
  (f) the Health and Safety Executive for Northern Ireland;
  (g) the Civil Aviation Authority;
  (h) the Office of Rail Regulation.

71 Arrangements with government departments etc

(1) If the condition in subsection (2) is met, the ONR may enter into an agreement with a Minister of the Crown, a government department or a public authority for the ONR to perform any function exercisable by the Minister, department or authority.

(2) The condition is that—
  (a) the function is—
    (i) a function of the Health and Safety Executive of investigating or making a special report under section 14 of the Health and Safety at Work etc. Act 1974, or
    (ii) a function of the Office of Rail Regulation of investigating or making a special report under paragraph 4 of Schedule 3 to the Railways Act 2005, or
  (b) the Secretary of State considers that the function in question can appropriately be performed by the ONR.

(3) The functions to which an agreement under subsection (1) may relate—
  (a) in the case of an agreement with a Minister of the Crown, include a function not conferred by an enactment;
  (b) do not include any power to make regulations or other instruments of a legislative character.

(4) An agreement under subsection (1) may provide for functions to be performed with or without payment.

(5) The ONR may provide services or facilities, with or without payment, otherwise than for the ONR's purposes, to a government department or public authority in connection with the exercise of that department's or authority's functions.

72 Provision of services or facilities

(1) The ONR may provide services and facilities for the ONR's purposes to any person.

(2) The ONR may, with the consent of the Secretary of State, provide any relevant services to any person, whether or not in the United Kingdom.

(3) In subsection (2), "relevant services" means services which—
(a) are not relevant to the ONR's purposes, but
(b) are in a field in which any member, employee or other member of staff of the ONR has particular expertise.

(4) The Secretary of State may give consent for the purposes of subsection (2)—
(a) in relation to particular arrangements for the provision of services, or
(b) generally in relation to such arrangements of a particular description.

(5) Arrangements for the provision of services to a person under subsection (2) are to be on such terms as to payment as that person and the ONR may agree.

Exercise of functions: general

73 Directions from Secretary of State

(1) The Secretary of State may give the ONR a direction as to the exercise by it of—
(a) its functions generally, or
(b) any of its functions specifically.

(2) A direction given by the Secretary of State under subsection (1)—
(a) may modify a function of the ONR, but
(b) must not confer functions on the ONR (other than a function of which it was deprived by a previous direction given under this section).

(3) The Secretary of State may give the ONR such directions as appear to the Secretary of State to be necessary or desirable in the interests of national security.

(4) A direction given by the Secretary of State under subsection (3) may—
(a) modify a function of the ONR,
(b) confer a function on the ONR.

(5) A direction under subsection (1) or (3) must not be given in relation to the exercise of a regulatory function in a particular case.

(6) If the Secretary of State is satisfied that there are exceptional circumstances relating to national security which justify giving a direction under this subsection, the Secretary of State may give the ONR a direction as to the exercise by the ONR of a regulatory function in a particular case.

(7) A direction under subsection (6) may be given only for the nuclear security purposes.

(8) The Secretary of State must lay before Parliament a copy of any direction given under this section.

(9) Subsection (8) does not apply to a direction under subsection (6) if the Secretary of State considers that publishing the direction would be contrary to the interests of national security; but, in that event, the Secretary of State must lay before Parliament a memorandum stating that such a direction has been given and the date on which it was given.

(10) Nothing in this section is to be taken—

(a) to permit the disclosure of information whose disclosure is prohibited under section 80,

(b) to affect the obligations of the ONR under the Freedom of Information Act 2000, or

(c) to require the disclosure of information which the ONR would not be required to disclose under—

(i) that Act, or

(ii) environmental information regulations within the meaning given in section 39(1A) of that Act.

74 Compliance with nuclear safeguards obligations

(1) The ONR must do such things as it considers best calculated to secure compliance by the United Kingdom or, as the case may be, to enable or facilitate compliance by a Minister of the Crown, with the safeguards obligations.

(2) For the purposes of this Part "the safeguards obligations" are—

(a) Articles 77 to 85 of the Treaty establishing the European Atomic Energy Community, signed at Rome on 25 March 1957,

(b) the agreement made on 6 September 1976 between the United Kingdom, the European Atomic Energy Community and the International Atomic Energy Agency for the application of safeguards in the United Kingdom in connection with the Treaty on the Non-Proliferation of Nuclear Weapons,

(c) the protocol signed at Vienna on 22 September 1998 additional to the agreement mentioned in paragraph (b), and

(d) such other obligations, agreements or arrangements relating to nuclear safeguards as may be specified in a notice given to the ONR by the Secretary of State;

and any reference in paragraphs (a) to (c) to a treaty, agreement or protocol is to it as it has effect for the time being.

(3) The Secretary of State may vary or revoke a notice given under subsection (2)(d) by giving a further notice to the ONR.

(4) Before giving a notice under this section, the Secretary of State must consult the ONR.

(5) The ONR must publish any notice given under this section.

(6) Subsection (1) is not to be taken to affect the generality of section 59.

75 Consent of Secretary of State required for certain publications

(1) Before the ONR publishes or arranges for the publication of any security material, whether alone or together with other material, it must obtain the consent of the Secretary of State.

(2) The Secretary of State may consent to the publication of all or part of the security material.

(3) To the extent that the Secretary of State does not consent to the publication of the security material, the ONR must not publish it or arrange for its publication.

(4) In subsections (1) to (3) "security material" means any material—

(a) that the ONR considers relates to matters falling within the nuclear security purposes, or

(b) that is of a description that the Secretary of State has directed should be submitted to the Secretary of State.

(5) A reference to security material does not include the ONR's strategy, the ONR's annual plan or reports by the ONR under paragraph 24 of Schedule 5 (as to which see paragraphs 22 to 25 of that Schedule).

(6) The Secretary of State may give the ONR a general consent in relation to the publication of a particular description of security material which would otherwise fall within subsection (4)(a).

(7) If the Secretary of State has given such a general consent, the ONR need not seek the Secretary of State's particular consent in relation to the publication of security material of that description unless directed by the Secretary of State to do so.

76 Power to arrange for exercise of functions by others

(1) If the condition in subsection (2) is satisfied, the ONR may make arrangements with a government department or other person for that department or person to perform any of the ONR's functions, with or without payment.

(2) That condition is that the Secretary of State considers that the function or functions in question can appropriately be performed by the government department or other person.

77 Co-operation between ONR and Health and Safety Executive

(1) The Health and Safety Executive and the ONR must enter into and maintain arrangements with each other for securing co-operation and the exchange of information in connection with the carrying out of any of their functions.

(2) The Health and Safety Executive and the ONR must—

(a) review the arrangements from time to time, and

(b) revise them when they consider it appropriate to do so.

Information etc

78 Power to obtain information

(1) The ONR may by notice require a person to provide information which the ONR needs for carrying out its functions.

(2) A notice may require information to be provided—
  (a) in a specified form or manner;
  (b) at a specified time;
  (c) in respect of a specified period.

(3) In particular, a notice may require the person to whom it is given to make returns to the ONR containing information about matters specified in the notice at times or intervals so specified.

(4) It is an offence—
  (a) to refuse or fail to comply with a notice under this section;
  (b) to provide the ONR knowingly or recklessly with information which is false or misleading in a material particular in response to a notice under this section.

(5) A person who commits an offence under this section is liable—
  (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  (b) on conviction on indictment, to a fine.

79 Information and articles etc held by HMRC

(1) The Commissioners for Her Majesty's Revenue and Customs may disclose information about imports to the ONR or an inspector for the purpose of facilitating the ONR or inspector to carry out any function.

(2) For this purpose, "information about imports" means information obtained or held by the Commissioners for the purposes of the exercise of their functions in relation to imports.

(3) Information may be disclosed to the ONR or an inspector under subsection (1) whether or not the disclosure of the information has been requested by or on behalf of the ONR or an inspector.

(4) An officer of Revenue and Customs may seize any imported article or substance and detain it for the purpose of facilitating the ONR or an inspector to carry out any function under the relevant statutory provisions.

(5) It is an offence for a person intentionally to obstruct an officer of Revenue and Customs in the exercise of powers under subsection (4).

(6) A person who commits an offence under subsection (5) is liable on summary conviction to imprisonment for a term not exceeding 51 weeks (in England and Wales), 12 months (in Scotland) or 6 months (in Northern Ireland), or a fine not exceeding level 5 on the standard scale, or both.

(7) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for summary offences), the reference in subsection (6), as it has effect in England and Wales, to 51 weeks is to be read as a reference to 6 months.

(8) Anything seized and detained under subsection (4)—
  (a) must not be detained for more than 2 working days, and
  (b) must be dealt with during the period of detention in such manner as the Commissioners may direct.

(9) In subsection (8), the reference to 2 working days is a reference to the period of 48 hours beginning when the article or substance in question is seized but disregarding any time falling on a Saturday or Sunday, or on Good Friday or Christmas Day or on a day which is a bank holiday in the part of the United Kingdom where it is seized.

80 Disclosure of information

(1) In this section, "protected information" means information—
  (a) obtained by a person under section 78,
  (b) provided to a person under section 79, or
  (c) provided to a person pursuant to a requirement imposed by any of the relevant statutory provisions,

other than information to which section 67 applies.

(2) Protected information must not be disclosed.

(3) Subsection (2) does not apply to the disclosure of information—
  (a) to—
    (i) a Minister of the Crown,
    (ii) the Scottish Ministers,
    (iii) the Welsh Ministers,
    (iv) a Northern Ireland Department,
    (v) the Health and Safety Executive,
    (vi) the Environment Agency,
    (vii) the Scottish Environment Protection Agency,
    (viii) the Office of Rail Regulation,
    (ix) the Civil Aviation Authority, or
    (x) any other government department;
  (b) to an officer of a local authority, water undertaker, sewerage undertaker, water authority or water development board who is authorised by that authority or other body to receive it;
  (c) to a constable authorised by a chief officer of police to receive it;
  (d) for the purposes of any function of the ONR under this Part;
  (e) if the information is disclosed in a form calculated to prevent it from being identified as relating to a particular person or case;
  (f) for the purposes of any legal proceedings, ONR inquiry or investigation held by virtue of section 64;
  (g) for the purposes of any report of any such proceedings or ONR inquiry or of a special report made under section 64;
  (h) in accordance with an obligation under the Freedom of Information Act 2000;
  (i) with the consent of the person from whom it was obtained.

(4) The prohibition in subsection (2) is to be disregarded for the purposes of section 44 of the Freedom of Information Act 2000 (prohibitions on disclosure).

(5) A reference in subsection (3)(a) to a person or a government department includes a reference to—

(a) an officer of that person or department;

(b) in the case of the Health and Safety Executive—

(i) a person performing any functions of the Executive on its behalf by virtue of section 13(3) of the Health and Safety at Work etc. Act 1974,

(ii) an officer of a body which is so performing any such functions,

(iii) an adviser appointed by the Executive under section 13(7) of that Act, and

(iv) a person appointed by the Executive under section 19 of that Act as an inspector within the meaning given in that section.

(6) A person to whom information is disclosed pursuant to subsection (3)(a) to (c) must not use the information for a purpose other than—

(a) in a case within subsection (3)(a), a purpose of the person or government department in question;

(b) in the case of information disclosed to an officer of an authority or other body mentioned in subsection (3)(b), the purposes of the authority or other body in question in connection with—

(i) the relevant statutory provisions, or

(ii) any provision of, or made under, primary legislation which relates to public health, public safety or the protection of the environment;

(c) in the case of information disclosed to a constable, the purposes of the police in connection with—

(i) the relevant statutory provisions, or

(ii) any provision of, or made under, primary legislation which relates to public health, public safety or national security.

(7) It is an offence for a person to disclose information in contravention of this section.

(8) A person who commits an offence under subsection (7) is liable—

(a) on summary conviction—

(i) to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland),

(ii) to a fine not exceeding the statutory maximum, or

(iii) to both;

(b) on conviction on indictment—

(i) to imprisonment for a term not exceeding 2 years,

(ii) to a fine, or

(iii) to both.

(9) In the application of subsection (8) to England and Wales in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's power to imprison), the reference in subsection (8)(a)(i) to 12 months is to be read as a reference to 6 months.

Fees

81 Fees and charges

(1) The Secretary of State may by regulations provide for fees to be payable for, or in connection with, the performance of any function conferred on—

(a) the ONR, or

(b) any other person,

by or under any of the relevant statutory provisions.

(2) The Secretary of State may by regulations provide for charges to be payable by any regulated persons in respect of the ONR's expenses so far as they exceed amounts recoverable—

(a) under regulations under subsection (1),

(b) by virtue of section 66(4), 69(4), 70(5), 71(4) or 72(5),

(c) under section 24A of the Nuclear Installations Act 1965 (recovery of expenses),

(d) under regulations under section 43 of the Health and Safety at Work etc. Act 1974 (fees), or

(e) under or by virtue of any other enactment relating to fees or charges.

(3) In subsection (2), "regulated person" means a person who—

(a) holds, or has applied for, any licence, approval or consent under any of the relevant statutory provisions, or

(b) having held such a licence, approval or consent, continues to be subject to any obligation by virtue of it.

(4) The amount of any fee or charge under regulations under this section must be—

(a) specified in the regulations, or

(b) determined by or in accordance with the regulations.

(5) Regulations under this section may provide for—

(a) the amounts of fees or charges to be different in different cases and, in particular, for fees in respect of the same function to be of different amounts in different circumstances;

(b) the calculation of fees and charges by reference to estimated amounts;

(c) the amount of any liability to pay a fee or charge to be adjusted after the fee or charge has been paid (including provision for repayments) whether—

(i) because of a change in circumstances during the period by reference to which it is calculated,

(ii) because of corrections to any estimated amount, or

(iii) for any other reason;

(d) fees payable for or in connection with any function to be payable to the person by or on whose behalf the function is performed;

(e) the payment of amounts into the Consolidated Fund.

(6) Regulations under this section may not provide for a fee or charge to be payable by anyone in the capacity of—

an employee,

a person seeking employment,

a person training for employment, or

a person seeking training for employment.

(7) For the purposes of subsection (6)—

(a) "employee" and "employment" have the same meanings as in Part 1 of the Health and Safety at Work etc. Act 1974, and

(b) an industrial rehabilitation course provided by virtue of the Employment and Training Act 1973 is to be treated as training for employment.

(8) Provision that may be included in regulations under this section by virtue of section 88(6) includes provision modifying any provision of, or made under, primary legislation.

(9) The Secretary of State may exercise the power in subsection (1) or (2)—

(a) so as to give effect (with or without modifications) to proposals submitted by the ONR under section 61(1), or

(b) independently of such proposals.

(10) Before exercising the power in subsection (1) or (2), the Secretary of State must consult—

(a) the ONR (unless the Secretary of State proposes to exercise the power so as to give effect without modification to such proposals), and

(b) where the Secretary of State proposes to exercise the power independently of such proposals, such other persons (if any) as appear to the Secretary of State to be appropriate.

CHAPTER 5

SUPPLEMENTARY

Offences

82 Provision relating to offences under this Part

(1) Schedule 7 (provision relating to offences under Part 2) has effect.

(2) That Schedule contains provision about the following matters—

(a) the place where an offence involving plant or a substance may be treated as having been committed;

(b) the extension of time for bringing summary proceedings in certain cases;

(c) the continuation of offences;

(d) where an offence committed by one person is due to the act or default of another person, the liability of that other person;

(e) offences by bodies corporate;

(f) restrictions on the persons who may institute proceedings in England and Wales;

(g) powers of inspectors to prosecute offences;

(h) the burden of proof in certain cases relating to what is practicable or what are the best means for doing something;

(i) reliance on entries in a register or other document as evidence;

(j) power of the court to order a defendant to take remedial action.

Supplementary

83 Reporting requirements of Secretary of State

(1) As soon as reasonably practicable after the end of the financial year, the Secretary of State must make a report to each House of Parliament on the use of the Secretary of State's powers under this Part during the year.

(2) The Secretary of State must lay a copy of any such report before Parliament.

(3) Nothing in this section is to be taken—

(a) to permit the disclosure of information whose disclosure is prohibited under section 80,

(b) to affect the obligations of the ONR under the Freedom of Information Act 2000, or

(c) to require the disclosure of information which the ONR would not be required to disclose under—

(i) that Act, or

(ii) environmental information regulations within the meaning given in section 39(1A) of that Act.

84 Notices etc

(1) In this section references to a notice are to a notice or other document that is required or authorised to be given to any person under a relevant provision.

(2) A notice to the person must be in writing.

(3) A notice may be given by—

(a) delivering it to the person,

(b) leaving it at the person's proper address,

(c) sending it by post to the person at that address, or

(d) in the case of a notice to be given to the owner or occupier of any premises (whether or not a body corporate), in accordance with subsection (9), (10) or (11).

(4) A notice may—

(a) in the case of a body corporate, be given in accordance with subsection (3) to a director, manager, secretary or other similar officer of the body corporate, and

(b) in the case of a partnership, be given in accordance with subsection (3) to a partner or a person having the control or management of the partnership business or, in Scotland, the firm.

(5) For the purposes of this section and section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the "proper address" is—

(a) in the case of a notice to be given to a body corporate or an officer of the body, the address of the registered or principal office of the body;

(b) in the case of a notice to be given to a partnership, a partner or a person having the control or management of the partnership business, the address of the principal office of the partnership;

(c) in any other case, the last known address of the person to whom the notice is to be given.

(6) For the purposes of subsection (5), the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

(7) Subsection (8) applies if—

(a) a person has specified an address in the United Kingdom as one at which the person, or someone on the person's behalf, will accept documents of the same description as a notice, and

(b) the address so specified is not the person's proper address (as determined under subsection (5)).

(8) The specified address is also to be treated as the person's proper address for the purposes of this section and section 7 of the Interpretation Act 1978 in its application to this section.

(9) A notice that is to be given to the owner or occupier of any premises may be given by—

(a) sending it by post to the person at those premises, or

(b) addressing it by name to the person and delivering it to some responsible person who is or appears to be resident or employed at the premises.

(10) If the name or address of an owner or occupier of premises cannot be ascertained after reasonable inquiry, a notice to the owner or occupier may be given by—

(a) addressing it by the description "owner" or "occupier" of the premises to which the notice relates (and describing the premises), and

(b) delivering it to some responsible person who is or appears to be resident or employed there.

(11) If there is no person as mentioned in subsection (10)(b), then the notice may be given by fixing it, or a copy of it, to some conspicuous part of the premises.

(12) This section is subject to provision made in regulations under this Part in respect of notices given under the regulations.

(13) In this section—

"director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate;

"employed" has the same meaning as in the Health and Safety at Work etc. Act 1974;

"relevant provision" means any of the relevant statutory provisions other than a provision of the Nuclear Safeguards Act 2000;

and references to giving a notice include similar expressions (such as serving or sending).

85 Electronic delivery of notices etc

(1) This section applies where—

(a) section 84 authorises the giving of a notice or other document by its delivery to a particular person ("the recipient"), and

(b) the notice or other document is transmitted to the recipient—

(i) by means of an electronic communications network, or

(ii) by other means but in a form that requires the use of apparatus by the recipient to render it intelligible.

(2) The transmission has effect for the purposes of section 84 as a delivery of the notice or other document to the recipient, but only if the recipient has indicated to the person making the transmission ("the sender") a willingness to receive the notice or other document in the form and manner used.

(3) An indication to the sender for the purposes of subsection (2)—
- (a) must be given to the sender in such manner as the sender may require,
- (b) may be a general indication or an indication that is limited to notices or other documents of a particular description,
- (c) must state the address to be used,
- (d) must be accompanied by such other information as the sender requires for the making of the transmission, and
- (e) may be modified or withdrawn at any time by a notice given to the sender in such manner as the sender may require.

(4) In this section "electronic communications network" has the same meaning as in the Communications Act 2003; and the reference to giving a notice is to be read in accordance with section 84.

86 Crown application: Part 2

(1) Subject as follows, this Part binds the Crown.

(2) The provisions mentioned in subsection (3)—
- (a) do not bind the Crown, but
- (b) apply to persons in the service of the Crown as they apply to other persons.

(3) Those provisions are—
- (a) Part 2 of Schedule 6 (improvement and prohibition notices);
- (b) paragraph 10 of that Schedule (power of inspector to deal with cause of imminent danger);
- (c) any provision of, or of regulations under, this Part, under or by virtue of which a person may be prosecuted for an offence.

(4) For the purposes of this Part and regulations made under this Part, persons in the service of the Crown are to be treated as employees of the Crown (whether or not they would be so treated apart from this subsection).

(5) The Secretary of State may, by order, exempt the Crown from any of the provisions which would, by virtue of subsection (1), bind the Crown.

(6) Nothing in this section authorises proceedings to be brought against Her Majesty in her private capacity (within the meaning of the Crown Proceedings Act 1947).

87 Interpretation of this Part

In this Part—

"approved code of practice" has the meaning given by section 60(9);

"harm to health" means any immediate or future adverse effect on a person's physical or mental condition including, in particular, any personal injury or disease;

"improvement notice" has the meaning given by paragraph 3(2) of Schedule 6;

"inspector" means an inspector appointed under Part 1 of Schedule 6 (unless otherwise specified);

"local authority" includes—

(a) a joint authority established by Part 4 of the Local Government Act 1985;

(b) an authority established for an area in England by an order under section 207 of the Local Government and Public Involvement in Health Act 2007 (joint waste authorities);

(c) the London Fire and Emergency Planning Authority;

(d) the Broads Authority; and

(e) a National Park authority;

"member of staff", in relation to the ONR, is to be read in accordance with paragraph 2(2) of Schedule 5;

"modify" includes amend, repeal or revoke (and "modification" is to be read accordingly);

"nuclear regulations" has the meaning given by section 55(1);

"ONR" means the Office for Nuclear Regulation;

"ONR inquiry" has the meaning given by section 65(2);

"primary legislation" means—

(a) an Act of Parliament,

(b) an Act of the Scottish Parliament,

(c) an Act or Measure of the National Assembly for Wales, or

(d) Northern Ireland legislation;

"prohibition notice" has the meaning given by paragraph 4(2) of Schedule 6;

"regulatory function", in relation to the ONR, includes—

(a) a function of giving or revoking permission or approval in relation to any material, site or activity;

(b) a function of imposing conditions or requirements in relation to any material, site or activity;

(c) a function, other than a function under section 64 (investigations), which relates to securing, monitoring or investigating compliance with conditions or requirements (however imposed) in relation to any material, site or activity;

(d) a function which relates to the enforcement of such requirements;

"relevant statutory provisions" has the meaning given by section 62(2).

88 Subordinate legislation under this Part

(1) Any power to make subordinate legislation under this Part is exercisable by statutory instrument.

(2) An instrument containing regulations under section 55 which amend or repeal any provision of the Nuclear Installations Act 1965 may not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament.

(3) An instrument containing an order under paragraph 26 of Schedule 5 (payments and borrowing) may not be made unless a draft of the instrument has been laid before and approved by resolution of the House of Commons.

(4) An instrument containing any other subordinate legislation under this Part, other than an order under section 86(5), is subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Any power to make subordinate legislation under this Part includes power—
  (a) to make different provision for different cases;
  (b) to make provision for some cases only or subject to exceptions;
  (c) to make provision generally or only in particular respects.

(6) Any subordinate legislation under this Part may include—
  (a) consequential, incidental or supplementary provision;
  (b) transitional, transitory or saving provision.

(7) In this section "subordinate legislation" means an Order in Council, an order or regulations.

89 Transitional provision etc

(1) The Secretary of State may by order make any transitional, transitory or saving provision which appears appropriate in consequence of, or otherwise in connection with, this Part.

(2) The provision which may be made by virtue of subsection (1) includes provision modifying any provision made by—
  (a) primary legislation passed before the end of the session in which this Act was passed, or
  (b) an instrument made before the end of that session.

(3) Provision made under this section is additional, and without prejudice, to that made by or under any other provision of this Act.

90 Transfer of staff etc

Schedule 8 (which makes provision about schemes to transfer staff etc to the ONR) has effect.

91 Minor and consequential amendments

(1) Schedule 9 (minor and consequential amendments related to Part 2) has effect.

(2) The Secretary of State may by order make such modifications of—
  (a) primary legislation passed before the end of the session in which this Act is passed, or
  (b) an instrument made before the end of that session,

as the Secretary of State considers appropriate in consequence of this Part.

92 Application of Part 2

(1) Her Majesty may by Order in Council provide that the provisions of this Part apply, so far as specified, in relation to persons, premises, activities, articles, substances or other matters, outside the United Kingdom as they apply within the United Kingdom or a specified part of the United Kingdom.

(2) Such an Order in Council may—
  (a) provide for any provisions of this Part to apply subject to modifications;

(b) provide for any of those provisions, as applied by the Order, to apply—
  (i) in relation to individuals, whether or not they are British citizens, and
  (ii) in relation to bodies corporate, whether or not they are incorporated under the law of a part of the United Kingdom;
(c) make provision for conferring jurisdiction on a specified court or courts of a specified description in respect of—
  (i) offences under this Part committed outside the United Kingdom, or
  (ii) causes of action under section 56 in respect of acts or omissions that occur outside the United Kingdom;
(d) make provision for questions arising out of any acts or omissions mentioned in paragraph (c)(ii) to be determined in accordance with the law in force in any specified part of the United Kingdom;
(e) exclude from the operation of section 3 of the Territorial Waters Jurisdiction Act 1878 (consents required for prosecutions) proceedings for offences under any provision of this Part committed outside the United Kingdom.

(3) In this section "specified", in relation to an Order in Council, means specified in the Order.

(4) Nothing in this section affects the application outside the United Kingdom of any provision of, or made under, this Part which so applies otherwise than by virtue of an Order in Council under this section.

PART 3

GOVERNMENT PIPE-LINE AND STORAGE SYSTEM

93 Meaning of "government pipe-line and storage system"

(1) In this Part "the government pipe-line and storage system" means any property to which subsection (2), (3), (4) or (5) applies and which is vested in the Secretary of State, including any land held by the Secretary of State for the purposes of such property.

(2) This subsection applies to any oil installations—
(a) which are government war works, within the meaning of the Requisitioned Land and War Works Act 1945, or
(b) to which section 28 of that Act applies by virtue of section 12(4) or (5) of the Requisitioned Land and War Works Act 1948.

(3) This subsection applies to any oil installations which have been, are being or are intended to be, laid, installed or constructed, in or on land acquired for the purpose by virtue of section 13(a) of the 1958 Act.

(4) This subsection applies to anything which has been, is being or is intended to be, laid, installed or constructed by virtue of a wayleave order under the 1958 Act.

(5) This subsection applies to any other oil installations or other property—
(a) relating to oil installations to which subsection (2) or (3) applies, or
(b) relating to anything to which subsection (4) applies.

(6) In this section—
  (a) "the 1958 Act" means the Land Powers (Defence) Act 1958, and
  (b) "oil installations" has the meaning given by section 25(1) of that Act.

94 Rights in relation to the government pipe-line and storage system

(1) The Secretary of State may maintain and use the government pipe-line and storage system or any part of it for any purpose for which it is suitable.

(2) The Secretary of State may remove, replace or renew the system or any part of it.

(3) The Secretary of State may restore land if the system or any part of it has been removed or abandoned.

(4) The Secretary of State may inspect or survey the system, any part of it or any land on or under which the system or any part of it is situated.

(5) The rights conferred by this section include in particular the right—
  (a) to place, continue or renew markers for indicating the position of the system or any part of it in so far as it is placed under land;
  (b) to erect and maintain stiles, gates, bridges or culverts for the facilitation of access to the system or any part of it;
  (c) to construct works for the facilitation of maintenance or inspection, or protection from damage, of the system or any part of it;
  (d) temporarily to place on land on or under which the system or any part of it is situated materials, plant or apparatus required in connection with the system or any part of it.

95 Right of entry

(1) For the purpose of exercising a right conferred by section 94, the Secretary of State may enter—
  (a) any land on or under which is situated any part of the government pipe-line and storage system, or
  (b) any land which is held with that land.

(2) The right conferred by subsection (1) is a right to enter on foot or with vehicles and includes a right to transport materials, plant and apparatus.

(3) For the purpose of accessing any land mentioned in subsection (1) ("the system land"), the Secretary of State may pass over any other land ("the access land") so far as it is necessary to do so for that purpose.

(4) But the right conferred by subsection (3) may be exercised only if, and to the extent that, the occupier or owner of the system land is entitled to exercise a corresponding right of access (whether by virtue of an easement, under an agreement or otherwise) to pass over the access land.

(5) Except in an emergency the rights conferred by this section may be exercised only—
  (a) at a reasonable time and with the consent of the occupier of the land, or
  (b) under the authority of a warrant (see section 96).

(6) "An emergency" means that urgent action is required to prevent or limit serious damage to health or to the environment.

(7) The rights conferred by this section do not include a right to enter premises used wholly or mainly as a private dwelling house.

96 Warrants for the purposes of section 95

(1) A justice of the peace or, in Scotland, a sheriff, may issue a warrant to authorise entry on to land in the exercise of a right conferred by section 95 (including such a right exercisable by virtue of provision made by or under section 99).

(2) The justice of the peace or the sheriff must be satisfied, on information on oath—

(a) that—

(i) at least 7 days' notice of intention to apply for a warrant has been given to the occupier of the land,

(ii) the occupier cannot be found, or

(iii) urgent action is required to prevent or limit serious damage to health or to the environment,

(b) (except where the occupier cannot be found) that entry to the land has been or is likely to be refused, and

(c) that there are reasonable grounds for exercising the right.

(3) A warrant under this section may authorise the use of reasonable force.

(4) It is an offence for a person intentionally to obstruct the exercise of any right conferred by a warrant under this section; and a person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) In the application of this section to Scotland the reference to information on oath is to be read as a reference to evidence on oath.

97 Registration of rights

(1) In this section a "GPSS right" is a right conferred by section 94, 95 or 99(1).

(2) A GPSS right in respect of any land—

(a) is not subject to any enactment requiring the registration or recording of interests in, charges over or other obligations affecting land;

(b) binds any person who is at any time the owner or occupier of the land.

(3) But a GPSS right in respect of any land in England or Wales is a local land charge and subsection (2)(a) does not apply to subsection (2) of section 5 of the Local Land Charges Act 1975 (duty to register local land charge).

(4) For the purposes of the operation in relation to a GPSS right of the duty under that subsection to register a local land charge, the Secretary of State is the originating authority.

(5) A GPSS right in respect of any land in Scotland may be registered in the Land Register of Scotland or recorded in the Register of Sasines.

98 Compensation

(1) The Secretary of State must pay compensation to a person who proves that the value of a relevant interest to which the person is entitled is depreciated by reason of the coming into force of section 94, 95 or 99.

(2) A "relevant interest" means an interest in land which—
  (a) comprises, or is held with, land in respect of which a right conferred by section 94, 95 or 99 is exercisable, and
  (b) subsisted at the time of the coming into force of the section.

(3) The amount of compensation payable under subsection (1) is the amount that is equal to the amount of the depreciation.

(4) If a person proves loss by reason of damage to, or disturbance in the enjoyment of, any land or chattels (or in Scotland corporeal moveables) as a result of the exercise of any right conferred by section 94 or 95, the person on whose behalf the right is exercised must pay compensation in respect of that loss.

(5) Any dispute about entitlement to, or amount of, compensation under this section is to be determined by—
  (a) in the application of this Act to England and Wales, the Upper Tribunal;
  (b) in the application of this Act to Scotland, the Lands Tribunal for Scotland.

(6) In relation to the assessment of compensation under subsection (1)—
  (a) for the purposes of an interest in land in England and Wales and the application of section 5A of the Land Compensation Act 1961 (relevant valuation date) the "relevant valuation date" is the date on which the section concerned comes into force;
  (b) for the purposes of an interest in land in Scotland and the operation of rule 2 in section 12 of the Land Compensation (Scotland) Act 1963 (value of land) the valuation must be made as at the date the section concerned comes into force.

99 Right to transfer the government pipe-line and storage system

(1) The Secretary of State may—
  (a) sell or lease the government pipe-line and storage system or any part of it;
  (b) transfer for valuable consideration or otherwise the ownership of the system or any part of it;
  (c) transfer for valuable consideration or otherwise any right relating to the system or any part of it (whether a right conferred by this Part or otherwise);
  (d) transfer any liability relating to the system or any part of it.

(2) Any sale, lease or transfer by virtue of subsection (1) may be subject to such conditions, if any, as the Secretary of State considers appropriate.

100 Application of the Pipe-lines Act 1962

(1) Subsection (3) applies in relation to any part of the government pipe-line and storage system which is for the time being owned otherwise than by the Secretary of State.

(2) In subsection (1) "owned" is to be construed in accordance with the definition of "owner" in section 66(1) of the Pipe-lines Act 1962.

(3) The following sections of that Act, namely—

(a) section 10 (provisions for securing that a pipe-line is so used as to reduce necessity for construction of others),

(b) section 36 (notification of abandonment, cesser of use and resumption of use of pipe-lines or lengths thereof),

apply in relation to any such part as if it were a pipe-line constructed pursuant to a pipe-line construction authorisation.

(4) Section 40(2) of that Act (application of the electronic communications code) applies—

(a) for the purposes of GPSS works as it applies for the purposes of works in pursuance of a compulsory rights order,

(b) to a person executing GPSS works as it applies to a person authorised to execute works in pursuance of such an order.

(5) In subsection (4) "GPSS works" means—

(a) works for inspecting, maintaining, adjusting, repairing, altering or renewing the government pipe-line and storage system or any part of it;

(b) works for changing the position of the system or any part of it;

(c) works for removing the system or any part of it;

(d) breaking up or opening land for the purpose of works falling within paragraph (a), (b) or (c), or tunnelling or boring for that purpose;

(e) other works incidental to anything falling within paragraph (a), (b), (c) or (d).

(6) To the extent that anything done under or by virtue of this Part constitutes the execution of pipe-line works for the purposes of section 45 of the Pipe-lines Act 1962 (obligation to restore agricultural land), subsection (3) of that section has effect as if after "this Act" there were inserted "or any provision of Part 3 of the Energy Act 2012".

101 Rights apart from this Part

(1) Nothing in this Part affects any other rights of the Secretary of State in relation to the government pipe-line and storage system (whether conferred under another enactment, by agreement or otherwise, and whether or not existing upon the coming into force of this section).

(2) For the purposes of sections 94, 95 and 99, it is immaterial whether a right corresponding to a right conferred by the section was exercisable by the Secretary of State before the coming into force of the section.

102 Repeals

(1) The provisions mentioned in subsection (2) cease to have effect.

(2) The provisions are—

(a) section 12 of the Requisitioned Land and War Works Act 1948 (permanent power to maintain government oil pipe-lines);

(b) section 13 of that Act (compensation in respect of government oil pipe-lines);

(c) section 14 of that Act (registration of rights as to government oil pipe-lines);

(d) section 15 of that Act (supplementary provisions as to government oil pipe-lines);
(e) section 12 of the Land Powers (Defence) Act 1958 (extension of provisions of Requisitioned Land and War Works Acts).

103 Power to dissolve the Oil and Pipelines Agency by order

(1) The Secretary of State may provide by order for—
(a) the repeal of the Oil and Pipelines Act 1985;
(b) the dissolution of the Oil and Pipelines Agency.

(2) If the Oil and Pipelines Agency is dissolved under subsection (1), the Secretary of State may by order make a scheme for the transfer to the Secretary of State of property, rights and liabilities (a "transfer scheme").

(3) Schedule 10 makes further provision about any transfer scheme contained in an order under subsection (2).

(4) An order under subsection (2) may make different provision for different cases or circumstances or for different purposes.

(5) An order under this section is to be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.

104 Crown application: Part 3

This Part binds the Crown.

PART 4

MISCELLANEOUS AND GENERAL

Offshore transmission

105 Offshore transmission systems

(1) The Electricity Act 1989 is amended as follows.

(2) In section 4 (prohibition on unlicensed supply), after subsection (3A) insert—

"(3AA) Subsection (3A) is subject to section 6F (offshore transmission during commissioning period)."

(3) After section 6E insert—

"6F Offshore transmission during commissioning period

(1) For the purposes of this Part a person is not to be regarded as participating in the transmission of electricity if the following four conditions are met.

(2) The first condition is that the transmission takes place over—
(a) an offshore transmission system ("the system"), or
(b) any transmission assets in relation to that system.

(3) The second condition is that the transmission takes place during a commissioning period.

(4) The third condition is that—

(a) a tender exercise has been or is being held for the granting of an offshore transmission licence in respect of the system, and

(b) the transmission assets have not been transferred as a result of the exercise to the successful bidder.

(5) The fourth condition is that the developer in relation to the tender exercise—

(a) is the person—

(i) who constructed or installed the transmission assets, or

(ii) on whose behalf those assets were constructed or installed, and

(b) is the operator of a relevant generating station.

(6) For the purposes of subsection (1), it does not matter whether or not the person participating in the transmission of electricity is also the developer in relation to the tender exercise.

(7) For the purposes of subsection (3), transmission takes place during a "commissioning period" if it takes place at any time—

(a) before a completion notice is given in respect of the system, or

(b) during the period of one year beginning with the day on which such a notice is given.

(8) A "completion notice", in relation to a transmission system, is a notice which—

(a) is given to the Authority by the relevant co-ordination licence holder in accordance with the co-ordination licence, and

(b) states that it would be possible to carry on an activity to which section 4(1)(b) applies by making available for use that system.

(9) For the purposes of subsection (4)(a), a tender exercise is being held in respect of a system from the time when the Authority has determined that the tender exercise request in respect of the system relates to a qualifying project for the purposes of the tender regulations.

(10) A "tender exercise request" means a request made by the developer in relation to the tender exercise to the Authority in accordance with the tender regulations.

(11) In this section—

"co-ordination licence" has the same meaning as in Schedule 2A (see paragraph 38(1) of that Schedule);

"developer", in relation to a tender exercise, means any person within section 6D(2)(a) (person who makes the connection request);

"offshore transmission" has the meaning given by section 6C(6);

"offshore transmission licence" has the meaning given by section 6C(5);

"offshore transmission system" means a transmission system used for purposes connected with offshore transmission;

"operator", in relation to a generating station, means the person who is authorised to generate electricity from that station—

(a) by a generation licence granted under section 6(1)(a), or

(b) in accordance with an exemption granted under section 5(1);

"qualifying project" is to be construed in accordance with the tender regulations;

"successful bidder" and "tender exercise" have the same meanings as in section 6D;

"relevant co-ordination licence-holder" has the meaning given by paragraph 13(4) of Schedule 2A;

"relevant generating station", in relation to an offshore transmission system, means a generating station that generates electricity transmitted over the system;

"the tender regulations" means regulations made under section 6C;

"transmission assets", in relation to an offshore transmission licence, means the transmission system in respect of which the licence is or is to be granted or anything which forms part of that system."

General

106 Review of Parts 1 and 2

(1) As soon as reasonably practicable after the end of the review period in relation to Part 1 or 2, the Secretary of State must—

(a) carry out a review of the relevant provisions of the Part, and

(b) set out the conclusions of the review in a report.

(2) The report must, in particular—

(a) set out the objectives of the relevant provisions of the Part,

(b) assess the extent to which those objectives have been achieved, and

(c) assess whether those objectives remain appropriate and, if so, the extent to which those objectives could be achieved in a way that imposes less regulation.

(3) The review period, in relation to a Part, is the period of 5 years beginning with the day on which the relevant provisions of the Part come generally into force.

(4) The Secretary of State must lay the report before Parliament.

(5) The "relevant provisions of a Part" are—

(a) in the case of Part 1—

(i) Chapter 1 (contracts for difference),

(ii) Chapter 3 (capacity market),

(iii) Chapter 4 (conflicts of interest),

(iv) Chapter 5 (contingency arrangements), and

(v) Chapter 6 (the renewables obligation: transitional arrangements);

(b) in the case of Part 2, all of its provisions.

107 Extent

(1) Subject to the rest of this section, this Act extends to England and Wales and Scotland.

(2) The following also extend to Northern Ireland—
  (a) in Part 1, Chapter 7 (emissions performance standard), and
  (b) subject to subsections (3) and (4), Part 2 (nuclear regulation).

(3) The following provisions extend only to England and Wales and Scotland—
  (a) paragraphs (a) and (d) of subsection (1) of section 55 (nuclear regulations for nuclear safety purposes and transport purposes) and the rest of that section (and Schedule 4) so far as relating to those paragraphs;
  (b) section 62 (enforcement) so far as relating to—
    (i) nuclear regulations made under either of those paragraphs;
    (ii) the Nuclear Installations Act 1965;
  (c) sections 64 to 67 (investigations and inquiries) so far as relating to—
    (i) the nuclear safety purposes;
    (ii) the transport purposes;
    (iii) nuclear regulations to be made under paragraph (a) or (d) of section 55(1);
    (iv) health and safety regulations.
  (d) in Schedule 6 (inspectors)—
    (i) Part 2, and
    (ii) Parts 1, 3 and 4 so far as relating to provisions mentioned in paragraph (b)(i) or (ii).

(4) The amendments made by Schedule 9 have the same extent as the provisions they amend, except that—
  (a) paragraph 21 (amendments of section 24 of the Nuclear Installations Act 1965) extends to England and Wales and Scotland only;
  (b) the other amendments in that Schedule of the Nuclear Installations Act 1965 extend to England and Wales, Scotland and Northern Ireland only;
  (c) paragraphs 32 to 42 (amendments of the Nuclear Safeguards and Electricity (Finance) Act 1978 and Nuclear Safeguards Act 2000) extend to England and Wales, Scotland and Northern Ireland only.

108 Commencement

(1) The provisions of this Act come into force on such day as the Secretary of State may by order made by statutory instrument appoint, subject to subsections (2) and (3).

(2) The following provisions come into force at the end of the period of 2 months beginning with the day on which this Act is passed—
  (a) Chapter 1 of Part 1 (contracts for difference);
  (b) Chapter 2 of that Part (investment instruments);
  (c) Chapter 4 of that Part (conflicts of interest);
  (d) Chapter 5 of that Part (contingency arrangements);
  (e) Chapter 6 of that Part (renewables obligation: transitional arrangements);

(f) Chapter 7 of that Part (emissions performance standard);
(g) Chapter 8 of that Part (strategy and policy statement), other than section 47(1) (repeals);
(h) section 105 (offshore transmission systems).

(3) The following provisions come into force on the day on which this Act is passed—
(a) section 106 (review of Parts 1 and 2);
(b) section 107 (extent);
(c) this section;
(d) section 109 (short title).

(4) An order under subsection (1) may—
(a) appoint different days for different purposes;
(b) make transitional provision and savings.

109 Short title

This Act may be cited as the Energy Act 2012.

SCHEDULES

SCHEDULE 1

Section 34

TRANSFER SCHEMES IN CONNECTION WITH ORDERS UNDER SECTION 34

Power to make transfer schemes

1 (1) The Secretary of State may exercise the power in sub-paragraph (2) in connection with the making of an order under section 34 providing for a person ("the transferee") to carry out EMR functions in place of another person ("the transferor").

(2) The Secretary of State may make one or more schemes for the transfer of designated property, rights or liabilities of the transferor to the transferee.

(3) On the transfer date, the designated property, rights and liabilities are transferred and vest in accordance with the scheme.

(4) The rights and liabilities that may be transferred by a scheme include those arising under or in connection with a contract of employment.

(5) A certificate by the Secretary of State that anything specified in the certificate has vested in any person by virtue of a scheme is conclusive evidence for all purposes of that fact.

(6) In this Schedule—

"designated", in relation to a scheme, means specified in or determined in accordance with the scheme;

"EMR functions" has the same meaning as in section 34;

"property" includes interests of any description;

"the transfer date" means a date specified by a scheme as the date on which the scheme is to have effect.

Contents of a scheme

2 (1) A scheme may make provision—

(a) for anything done by or in relation to the transferor in connection with any property, rights or liabilities transferred by the scheme to be treated as done, or to be continued, by or in relation to the transferee;

(b) for references to the transferor in any agreement (whether written or not), instrument or other document relating to any property, rights or liabilities transferred by the scheme to be treated as references to the transferee;

(c) about the continuation of legal proceedings;

(d) for transferring property, rights or liabilities which could not otherwise be transferred or assigned;

(e) for transferring property, rights and liabilities irrespective of any requirement for consent which would otherwise apply;

(f) for preventing a right of pre-emption, right of reverter, right of forfeiture, right to compensation or other similar right from arising or becoming exercisable as a result of the transfer of property, rights or liabilities;

(g) for dispensing with any formality in relation to the transfer of property, rights or liabilities by the scheme;

(h) for transferring property acquired, or rights or liabilities arising, after the scheme is made but before it takes effect;

(i) for apportioning property, rights or liabilities;

(j) for creating rights, or imposing liabilities, in connection with property, rights or liabilities transferred by the scheme;

(k) for requiring the transferee to enter into any agreement of any kind, or for a purpose, specified in or determined in accordance with the scheme.

(2) Sub-paragraph (1)(b) does not apply to references in an Act or in subordinate legislation.

Compensation

3 A scheme may contain provision for the payment of compensation by the Secretary of State to any person whose interests are adversely affected by it.

Incidental provision

4 A scheme may include supplementary, incidental, transitional and consequential provision.

SCHEDULE 2

Section 35

THE RENEWABLES OBLIGATION: CERTIFICATE PURCHASE SCHEME

1 The Electricity Act 1989 is amended as follows.

2 (1) Section 32B (renewables obligation certificates) is amended as follows.

(2) In the title after "certificates" insert "and fixed price certificates".

(3) After subsection (2) insert—

"(2A) A certificate purchase order may (subject to subsection (2C)) provide for the Authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate ("a fixed price certificate") to—

(a) the operator of a generating station, or

(b) if the order so provides, a person of any other description specified in the order.

(2B) A fixed price certificate is to certify—

(a) the matters within subsection (3), or

(b) if the order provides that a certificate may certify the matters within subsection (5), (7) or (8), the matters within that subsection.

(2C) A fixed price certificate certifying that an amount of electricity has been generated from renewable sources in any period may not be issued if—

(a) the electricity is generated in the relevant part of Great Britain in respect of which a renewables obligation order is in force, and

(b) a renewables obligation certificate has been, or could be, issued under the order in respect of the generation in that period of the same electricity."

(4) After subsection (11) insert—

"(11A) In subsection (9)(b) "the order" means—

(a) in relation to a renewables obligation certificate, the renewables obligation order;

(b) in relation to a fixed price certificate, the certificate purchase order."

(5) In subsection (12), for "an order" (in both places) substitute "a renewables obligation order".

3 (1) Section 32C (section 32B: supplemental provision) is amended as follows.

(2) After subsection (1) insert—

"(1A) A certificate purchase order may provide—

(a) that no fixed price certificates are to be issued in respect of electricity generated in specified cases or circumstances, or

(b) that fixed price certificates are to be issued in respect of a proportion only of the electricity generated in specified cases or circumstances."

(3) In subsection (2), after (1) insert "or (1A)".

(4) In subsection (3), after "subsection (1)(b)" insert "or (1A)(b)".

(5) In subsection (5)(a), after "determined" insert "for the purposes of that order".

(6) After subsection (5) insert—

"(5A) A certificate purchase order may specify—

(a) how the proportion referred to in subsection (4) is to be determined for the purposes of that order, and

(b) the consequences for the issuing of fixed price certificates if a generating station of the type mentioned in that subsection uses more than a specified proportion of fossil fuel during a specified period."

4 After section 32C insert—

"32CA Section 32B: further supplemental provision in case of fixed price certificates

(1) A certificate purchase order may provide that ownership of a fixed price certificate may be transferred—

(a) only to persons of a specified description;

(b) only if other specified conditions are met.

(2) A certificate purchase order may specify circumstances in which the Authority may revoke a fixed price certificate before the certificate purchase obligation in respect of the certificate is discharged (whether before or after the certificate is presented for payment).

(3) A certificate purchase order may make provision requiring a person to whom a fixed price certificate is issued to pay to the Authority an amount equal to any amount that has been paid in respect of the certificate under the certificate purchase obligation if it appears to the Authority that—

(a) the certificate should not have been issued to that person, and

(b) it is not possible to secure the recovery of such an amount by refusing to issue another fixed price certificate to the person.

(4) Provision under subsection (3) may include provision about enforcement and appeals.

(5) Any amounts received by the Authority under provision made by virtue of subsection (3) are to be paid into the Consolidated Fund."

5 (1) Section 32D (amounts of electricity specified in certificates) is amended as follows.

(2) After subsection (1) insert—

"(1A) A certificate purchase order may specify the amount of electricity to be stated in each fixed price certificate, and different amounts may be specified in relation to different cases or circumstances."

(3) In subsection (3), after "subsection (1)" insert "or in a certificate purchase order by virtue of subsection (1A)".

(4) In subsection (4)—

(a) at the beginning of paragraph (e) insert "in the case of a renewables obligation order,", and

(b) after that paragraph insert—

"(ea) in the case of a certificate purchase order, the likely effect of the proposed banding provision on the number of fixed price certificates issued by the Authority, and the impact this will have on consumers;".

(5) In subsection (7)—

(a) after "first" insert "renewables obligation", and

(b) after "subsequent" insert "renewables obligation".

(6) After subsection (8) insert—

"(9) After the first certificate purchase order containing banding provision is made by the Secretary of State, no subsequent certificate purchase order containing such provision may be made by the Secretary of State except following a review held by virtue of subsection (10).

(10) A certificate purchase order—

(a) may authorise the Secretary of State to review the banding provision at such intervals as are specified in or determined in accordance with the order, and

(b) may authorise the Secretary of State to review the whole or any part of the banding provision at any time when the Secretary of State is satisfied that one or more of the specified conditions is satisfied."

6 In the title to section 32E (section 32D: transitional provision and savings), after "savings" insert "in case of renewables obligation orders".

7 After section 32E insert—

"32EA Section 32D: transitional provision and savings in case of certificate purchase orders

(1) This section applies where a certificate purchase order contains banding provision.

(2) The order may provide for the effect of any banding provision made in an earlier such order to continue, in such circumstances as may be specified, in relation to—

(a) the electricity generated by generating stations of such descriptions as may be specified, or

(b) so much of the electricity as may be determined in accordance with the order.

(3) The order may provide for the effect of any banding provision made in a renewables obligation order to apply, in such circumstances as may be specified, in relation to fixed price certificates as it applied in relation to renewables obligation certificates.

(4) Section 32D(4) and (9) do not apply in relation to provision of the kind mentioned in subsection (2) or (3) above.

(5) Subsection (7) applies to a generating station in respect of which a statutory grant has been awarded if—

(a) the generating station is of a specified description, or

(b) the circumstances of the case meet specified requirements.

(6) The requirements specified under subsection (5)(b) may relate to the time when the grant was awarded (whether a time before or after the coming into force of this section).

(7) A certificate purchase order which contains banding provision may provide for the operation of that provision in relation to electricity generated by a generating station to which this subsection applies to be conditional upon the operator of the station agreeing—

(a) if the grant or any part of it has been paid, to repay to the person who made the grant ("the payer") the whole or a specified part of the grant or part before the repayment date,

(b) to pay to the payer interest on an amount repayable under paragraph (a) for such period, and at such rate, as may be determined in accordance with the order (which may confer the function of making the determination on a person), and

(c) if the grant or any part of it has not yet been paid, to consent to the cancellation of the award of the grant or part.

(8) For the purposes of subsection (7)—

(a) "the repayment date" means the date specified in or determined in accordance with the order, and

(b) the period for which interest is payable must not begin before the grant was paid or, if the repayment relates to an instalment of the grant, before the instalment was paid.

(9) In this section "statutory grant" has the same meaning as in section 32E.

(10) This section is without prejudice to section 32K(1)(b) (power for certificate purchase order to include transitional provision and savings)."

8 (1) Section 32J (information) is amended as follows.

(2) After subsection (1) insert—

"(1A) A certificate purchase order may provide for the Authority to require a person to provide the Authority with information, or with information of a particular kind, which in the Authority's opinion is relevant to the question of whether a fixed price certificate is, or was or will in future be, required to be issued to the person."

(3) In subsection (2) for "That information" substitute "Information of the kind mentioned in subsection (1) or (1A)".

(4) In subsection (3) after "order" insert "or a certificate purchase order".

9 (1) Section 32K (renewables obligation order: general provision) is amended as follows.

(2) In the title for "order" substitute "and certificate purchase orders".

(3) In subsection (1) after "order" insert "or a certificate purchase order".

(4) In subsection (2) after "made" insert "in a renewables obligation order".

(5) After subsection (2) insert—

"(2A) Provision made by virtue of subsection (1)(b) in a certificate purchase order may, in particular, include provision for renewables obligation certificates, issued in respect of a period before the imposition of the certificate purchase obligation, to be treated as if they were fixed price certificates issued in respect of a subsequent period for which the order is in force."

10 After section 32L (renewables obligation orders: procedure) insert—

"32LACertificate purchase orders: procedure

(1) Before making a certificate purchase order, the Secretary of State must consult—

(a) the Authority,

(b) the Council,

(c) such electricity suppliers that may be required to pay the certificate purchase levy as the Secretary of State considers appropriate,

(d) such generators of electricity from renewable sources as the Secretary of State considers appropriate, and

(e) such other persons, if any, as the Secretary of State considers appropriate.

(2) A certificate purchase order is not to be made by the Secretary of State unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament."

11 (1) Section 32M (interpretation of sections 32 to 32M) is amended as follows.

(2) In subsection (1)—

(a) for "32L" (in the words before the first definition) substitute"32LA";

(b) after the definition of "bioliquid" insert—

""certificate purchase levy" is to be construed in accordance with section 32AC;

"certificate purchase order" is to be construed in accordance with section 32AA;

"the certificate purchase obligation" is to be construed in accordance with section 32AA(4);

"fixed price certificate" is to be construed in accordance with section 32B;";

(c) after the definition of "Northern Ireland supplier" insert—

""the purchasing body" is to be construed in accordance with section 32AA(3);";

(d) in the definition of "the relevant minister", after "minister"" insert ", in relation to a renewables obligation order,";

(e) after that definition insert—

""the relevant minister", in relation to a certificate purchase order, means the Secretary of State;";

(f) after the definition of "renewable sources" insert—

""specified", in relation to a certificate purchase order, means specified in the order;".

(3) In subsection (2) after "order" insert "or a certificate purchase order".

(4) After subsection (7) insert—

"(7A) A certificate purchase order may make provision, for the purposes of section 32AA to 32LA, about the circumstances in which electricity is to be regarded as having been supplied to customers in Great Britain."

12 In section 106 (regulations and orders), in subsection (2)(b) after "32," insert "32AA,".

SCHEDULE 3

Section 36

EMISSIONS LIMIT DUTY: REGULATIONS

PART 1

APPLICATION AND MODIFICATION OF EMISSIONS LIMIT DUTY

Application of duty: changes to main boilers

1 (1) Regulations under section 36(5)(b) may provide for the emissions limit duty to apply (with or without modifications) in relation to fossil fuel plant in cases where—

(a) immediately before the day on which section 36(1) came into force, the electricity generating station in question was the subject of a relevant consent, and

(b) on or after that day—

(i) any main boiler of the generating station is replaced, or

(ii) an additional main boiler is installed for the generating station.

(2) Regulations made by virtue of this paragraph may, in particular, make different provision in relation to different parts of fossil fuel plant.

(3) For the purposes of sub-paragraph (1)(a), plant is to be treated as the subject of a relevant consent if, by virtue of a consent or approval granted before section 36 of the Electricity Act 1989 or Article 39 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992 No. 231 (N.I. 1)) came into force, no relevant consent was required in respect of it.

Application of duty: generating stations not supplying to a transmission system or a distribution system

2 Regulations under section 36(5)(b) may provide for the emissions limit duty to apply (with or without modifications) in relation to a generating station (and associated CCS plant) which would be fossil fuel plant but for the fact that electricity produced by the generating station—

(a) is not conveyed from it by means of a transmission system, and

(b) is not distributed by means of a distribution system.

Modifications where CCS plant associated with two or more generating stations

3 (1) Regulations under section 36(5)(b) may provide for the emissions limit duty to apply with modifications in cases where—

(a) CCS plant is associated with two or more electricity generating stations, and

(b) each of those generating stations is the subject of a relevant consent.

(2) Regulations made by virtue this paragraph may, in particular, provide for—

(a) the installed generating capacity of any those generating stations (or any part of it) to be treated as installed generating capacity of another of those generating stations;

(b) any of the emissions from the CCS plant to be treated as emissions from any of the generating stations.

Modifications of emissions limit for commencement and cessation of operation and alterations

4 Regulations under section 36(5)(b) may modify the emissions limit duty in relation to fossil fuel plant in cases where the generating station—

(a) is used for the first time, or permanently ceases to be used, for the generation of electricity, or

(b) is altered.

PART 2

ENFORCEMENT

Matters that may be contained in enforcement regulations

5 (1) The matters that may be contained in enforcement regulations include—

(a) conferring functions for or in connection with monitoring or enforcing the compliance of operators with the emissions limit duty;

(b) determining the authorities by whom such functions are to be exercisable ("enforcing authorities");

(c) requiring enforcing authorities to comply with directions given by the Secretary of State in carrying out any of their functions under the regulations;

(d) requiring or authorising enforcing authorities to carry out consultation in connection with the carrying out of any such functions;

(e) the provision, use and publication of information in relation to the compliance of operators with the emissions limit duty;

(f) authorising the Secretary of State to make schemes for the charging by enforcing authorities of fees or other charges in respect of—

(i) the testing or analysis of substances, or

(ii) the validating of, or of the results of, any testing or analysis of substances,

in cases where the testing, analysis or validating is carried out in connection with functions conferred on enforcing authorities under the regulations;

(g) the enforcement of contraventions of the emissions limit duty through enforcement notices (see paragraph 6);

(h) the procedure to be followed in connection with the service of enforcement notices (including requirements for such notices to be published in draft before being served for the purpose of enabling representations to be made about them);

(i) the enforcement of—

(i) enforcement notices,

(ii) undertakings given in connection with such notices, or

(iii) other obligations imposed on operators under the regulations,

by proceedings in the High Court or any court of competent jurisdiction in Scotland;

(j) conferring rights of appeal in respect of decisions made, notices served or other things done (or omitted to be done) by enforcing authorities under the regulations (including provision in relation to the making, consideration and determination of such appeals);

(k) the application of the regulations to the Crown.

(2) Provision under sub-paragraph (1)(a) may in particular include provision—

(a) conferring power on enforcing authorities to take samples or to make copies of information;

(b) conferring power on enforcing authorities to arrange for preventative or remedial action to be taken at the expense of operators;

(c) authorising enforcing authorities to appoint suitable persons to exercise the functions mentioned in paragraph (a) or (b);

(d) conferring powers on persons so appointed (which may include, so far as relevant, the powers mentioned in section 108(4) of the Environment Act 1995).

(3) Provision under sub-paragraph (1)(c) may in particular include provision for directions to require enforcing authorities to treat the emissions limit as modified or suspended for a specified period.

(4) Provision under sub-paragraph (1)(e) may in particular include provision—

(a) enabling enforcing authorities to use, for the purposes of their functions conferred under the regulations in respect of fossil fuel plant, information held for the purposes of their functions in relation to such plant conferred under regulations implementing the ETS Directive;

(b) requiring operators, or other persons of a description specified in the regulations, to provide to an enforcing authority such information, and in such manner, as—

(i) the regulations may specify, or

(ii) the authority may reasonably require;

(c) requiring or authorising enforcing authorities to publish such information, and in such manner, as is specified in the regulations (whether such information is held as mentioned in paragraph (a) or is provided as mentioned in paragraph (b));

(d) requiring operators to publish such information, and in such manner, as—

(i) the regulations may specify, or

(ii) an enforcing authority may reasonably require.

(5) Provision under sub-paragraph (1)(f) in relation to a scheme may—

(a) require the scheme to be so framed that the fees and charges payable under the scheme are sufficient, taking one year with another, to cover such expenditure (whether or not incurred by the enforcing authority or other person to whom they are so payable) as is specified;

(b) authorise any such scheme to make different provision for different cases (and specify particular kinds of such cases).

Enforcement notices

6 (1) Enforcement regulations may authorise an enforcing authority to serve an enforcement notice on a operator who has breached the emissions limit duty—

(a) in relation to the year in which the notice is served, or

(b) in relation to the preceding year.

(2) The regulations may specify the requirements that may be imposed on an operator under an enforcement notice.

(3) Those requirements may in particular include requirements—

(a) to take such remedial action in respect of the breach as is specified in the notice,

(b) to provide such undertakings in respect of the breach as may be agreed between the operator and the enforcing authority (whether for the taking of remedial action or otherwise),

(c) to pay such a financial penalty in respect of the breach as is specified in, or calculated in accordance with, the notice or the regulations, or

(d) to comply with a modified emissions limit duty for any year to take account of excess emissions in earlier years.

(4) A financial penalty imposed under an enforcement notice by virtue of sub-paragraph (3)(c) may be instead of, or in addition to, another requirement imposed under the notice.

(5) An enforcing authority must have regard to any guidance issued by the Secretary of State in imposing a requirement in an enforcement notice for the payment of a financial payment.

General

7 (1) Enforcement regulations may—

(a) make provision which corresponds or is similar to any provision made, or capable of being made, under section 2(2) of the European Communities Act 1972 in connection with the ETS Directive (subject to any modifications that the Secretary of State thinks appropriate);

(b) apply or incorporate (with or without modifications) other enactments relating to the prevention or control of environmental pollution (including, in particular, regulations implementing the ETS Directive and directly applicable EU legislation).

(2) Enforcement regulations may—

(a) include incidental, supplementary and consequential provision;

(b) make transitory or transitional provision or savings.

(3) Provision under sub-paragraph (2)(a) may amend, repeal or revoke any provision made by or under an Act or an Act of the Scottish Parliament.

(4) Provision under sub-paragraph (2)(b) may include provision modifying provision made by virtue of paragraph 6(3)(d) in cases where there is no applicable emissions limit in respect of any year.

Interpretation

8 In this Part of this Schedule—

"enforcement regulations" means regulations under section 36(5)(c);

"functions" includes powers, duties and functions involving the exercise of a discretion.

SCHEDULE 4

Section 55

NUCLEAR REGULATIONS

Nuclear installations etc.

1 Imposing requirements with respect to the following, in relation to any nuclear installation or its site—

(a) design and construction;
(b) guarding;
(c) siting, installation and commissioning;
(d) testing, maintenance and repair;
(e) inspection;
(f) alteration or adjustment;
(g) dismantling and decommissioning.

Research

2 Requiring research to be carried out in connection with any activity mentioned in paragraph 1.

Import etc

3 (1) Regulating or prohibiting the import of things of specified descriptions into the United Kingdom.

(2) For this purpose "import" includes landing and unloading.

(3) Where an act or omission could constitute an offence—

(a) under a provision of nuclear regulations made by virtue of sub-paragraph (1), and
(b) under a provision of the Customs and Excise Acts 1979,

specifying the provision under which the offence is to be punished.

Transport

4 Imposing requirements about how any radioactive material may be transported, including requirements about construction, testing and marking of packages or containers.

Licences and approvals

5 (1) Prohibiting any specified activity except—

(a) as permitted by virtue of a licence, or
(b) with the consent or approval of a specified authority.

(2) Providing for the grant, renewal, variation, transfer and revocation of licences (including the variation and revocation of conditions attached to licences).

Appointment of persons to carry out specified functions

6 (1) Requiring, in specified circumstances, the appointment (whether in a specified capacity or not) of persons to perform specified functions.

(2) Imposing duties or conferring powers on persons appointed (whether in pursuance of the regulations or not) to perform specified functions.

(3) Imposing requirements with respect to the qualifications or experience, or both, of persons—

(a) appointed pursuant to a requirement imposed by virtue of sub-paragraph (1), or

(b) performing specified functions.

Restrictions on employment

7 Regulating or prohibiting the employment in specified circumstances of—

(a) all persons, or

(b) persons of a specified description.

Instruction, training and supervision etc.

8 Imposing requirements with respect to the instruction, training and supervision of persons at work.

Registration, notification and records

9 Requiring any person, premises or thing to be registered—

(a) in any specified circumstances, or

(b) as a condition of doing any specified activity.

10 (1) Requiring, in specified circumstances, specified matters to be notified in a specified manner to specified persons.

(2) Specifying any power, to be exercisable by any inspector who may be authorised to exercise it by the instrument of appointment, in specified circumstances to require persons to provide information about measures they propose to take in order to comply with any of the relevant statutory provisions.

11 Imposing requirements with respect to making and keeping of records and other documents, including plans and maps.

Accidents and other occurrences

12 Securing that persons in premises of any specified description where persons work leave the premises in specified circumstances.

13 Restricting, prohibiting or requiring the doing of any specified thing where any accident or other occurrence of a specified kind has occurred.

Interpretation

14 (1) In this Schedule, "activity" includes process, operation or act.

(2) No provision in this Schedule is to be regarded as limiting the generality of any other provision in this Schedule.

SCHEDULE 5

Section 58

THE OFFICE FOR NUCLEAR REGULATION

Status

1 (1) The ONR is not to be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

(2) The ONR's property is not to be regarded as the property of, or property held on behalf of, the Crown.

Membership

2 (1) The ONR is to consist of—

(a) not more than 4 executive members, who are employees of the ONR, and

(b) not more than 7 non-executive members, who are not members of the ONR's staff.

(2) References in this Part of this Act to members of the ONR's staff are to persons who—

(a) are employees of the ONR, or

(b) have been seconded to it.

3 The executive members consist of—

(a) the Chief Nuclear Inspector,

(b) the Chief Executive Officer, and

(c) not more than 2 other members (or not more than 3 other members, if the Chief Nuclear Inspector and the Chief Executive Officer are the same person) appointed by the ONR.

4 (1) The non-executive members consist of—

(a) a chair appointed by the Secretary of State,

(b) the member (if any) appointed under sub-paragraph (3), and

(c) not more than 5 other members appointed by the Secretary of State.

(2) The Secretary of State must, so far as practicable, ensure that at any given time there are no fewer than 5 non-executive members of the ONR.

(3) One non-executive member must have experience of, or expertise in, matters relevant to the ONR's nuclear security purposes.

(4) The Health and Safety Executive may—

(a) appoint a non-executive member from among the members of the Health and Safety Executive (an "HSE member"), or

(b) authorise the Secretary of State to appoint a non-executive member.

(5) The Health and Safety Executive must notify the ONR and the Secretary of State whenever it appoints an HSE member.

5 Service as a member of the ONR is not service in the civil service of the State, but this is subject to paragraph 6.

6 Members of the ONR and members of the ONR's staff are to be regarded as Crown servants for the purposes of the Official Secrets Act 1989.

Terms of appointment

7 Subject to the following provisions of this Schedule, members of the ONR hold and vacate office in accordance with the terms of their respective appointments.

8 (1) The terms of a person's appointment as an executive member are to be determined by the ONR.

(2) The terms of a person's appointment as a non-executive member, other than an HSE member, are to be determined by the Secretary of State.

(3) The terms of a person's appointment as an HSE member are to be determined by the Health and Safety Executive.

9 (1) An executive member—

(a) ceases to be a member of the ONR upon ceasing to be an employee of the ONR, and

(b) may at any time resign from office by notice to the ONR.

(2) A non-executive member other than an HSE member—

(a) ceases to be a member of the ONR upon becoming a member of the ONR's staff, and

(b) may at any time resign from office by notice to the Secretary of State.

(3) An HSE member—

(a) ceases to be a member of the ONR upon ceasing to be a member of the Health and Safety Executive, and

(b) may at any time resign from office by notice to the Health and Safety Executive.

10 (1) The Secretary of State may by notice remove any non-executive member, other than an HSE member, from office.

(2) A notice may not be given under sub-paragraph (1) unless at least one of the conditions in sub-paragraph (3) or (4) is met.

(3) The conditions in this sub-paragraph are that the member—

(a) has been absent from meetings of the ONR for a period longer than 6 months without the permission of the ONR;

(b) is an undischarged bankrupt or has had his or her estate sequestrated without being discharged;

(c) is a person in relation to whom a moratorium period under a debt relief order applies;

(d) is subject to a bankruptcy restrictions order or an interim bankruptcy restrictions order;

(e) is subject to a debt relief restrictions order or an interim debt relief restrictions order;

(f) has made an arrangement with his or her creditors, or has entered into a trust deed for creditors, or has made a composition contract with his or her creditors;

(g) is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986 or equivalent legislation in Northern Ireland;

(h) has been convicted of a criminal offence (but this does not apply in relation to any conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974).

(4) The conditions in this sub-paragraph are that the Secretary of State is satisfied that the member—

(a) has a financial or other interest that is likely to affect prejudicially the carrying out of his or her functions as a member of the ONR;

(b) has been guilty of misbehaviour; or

(c) is otherwise incapable of carrying out, or unfit to carry out, the functions of his or her office.

(5) The Health and Safety Executive may by notice remove an HSE member from office.

(6) The Health and Safety Executive must notify the ONR and the Secretary of State whenever an HSE member—

(a) ceases to be a member of the Health and Safety Executive,

(b) resigns from office, or

(c) is removed from office.

(7) In sub-paragraph (3) "debt relief order", "debt relief restrictions order" and "interim debt relief restrictions order" mean the orders of those names made under—

(a) Part 7A of the Insolvency Act 1986; or

(b) Part 7A of the Insolvency (Northern Ireland) Order 1989.

Remuneration and pensions of non-executive members

11 (1) The ONR may pay to non-executive members such remuneration as may be determined by the Secretary of State.

(2) The ONR may pay, or make provision for paying, to or in respect of the non-executive members, such sums by way of allowances, expenses, pensions or gratuities as may be determined by the Secretary of State.

(3) The ONR may make a payment to a person who ceases, otherwise than on the expiry of his or her term of office, to be a non-executive member, if it appears to the ONR that there are special circumstances that make it right for that person to receive compensation.

(4) A payment under sub-paragraph (3) is to be of such amount as may be determined by the Secretary of State.

Employees and other members of staff

12 (1) The ONR may appoint persons to serve as its employees.

(2) A person appointed to serve as an employee of the ONR is to be employed on such terms and conditions, including terms and conditions as to remuneration, as the ONR may determine.

(3) One employee of the ONR is to be appointed as the Chief Nuclear Inspector.

(4) One employee of the ONR is to be appointed as the Chief Executive Officer.

(5) The appointment of the Chief Nuclear Inspector or the Chief Executive Officer also requires the approval of the Secretary of State.

(6) A person may be both the Chief Nuclear Inspector and the Chief Executive Officer.

(7) The ONR may make arrangements for persons to be seconded to the ONR to serve as members of the ONR's staff.

(8) A period of secondment to the ONR does not affect the continuity of a person's employment with the employer from whose service he or she is seconded.

13 (1) The ONR may pay to or in respect of an employee sums by way of or in respect of allowances, expenses, pensions, gratuities or compensation for loss of employment.

(2) The ONR may pay to or in respect of a person seconded to it sums by way of or in respect of allowances, expenses, pensions or gratuities.

(3) An executive member may not take part in the determination of the amount of any remuneration, allowance, expense, pension, gratuity or compensation payable to or in respect of him or her.

14 (1) Service as an employee of the ONR is not service in the civil service of the State.

(2) A person employed in the civil service of the State continues to be employed in the civil service of the State during any period of secondment to the ONR.

(3) Employment by the ONR is not Crown employment for the purposes of the Trade Union and Labour Relations (Consolidation) Act 1992 (see section 273 of that Act).

15 (1) The persons to whom section 1 of the Superannuation Act 1972 (persons to or in respect of whom benefits may be provided by schemes under that section) applies are to include the employees of the ONR.

(2) Accordingly, in Schedule 1 to that Act (employment to which superannuation schemes may extend), in the list of other bodies, at the appropriate place insert—

"Office for Nuclear Regulation."

(3) The ONR must pay to the Minister for the Civil Service, at such times as that Minister may direct, such sums as that Minister may determine in respect of the increase attributable to sub-paragraph (1) in the sums payable out of money provided by Parliament under that Act.

Committees

16 (1) The ONR may establish committees, and any committee may establish sub-committees.

(2) The members of a committee may include persons who are not members of the ONR or the ONR's staff (and the members of a sub-committee of a committee may include persons who are not members of the committee or members of the ONR or the ONR's staff).

(3) The ONR may make arrangements for the payment of such remuneration, allowances and expenses as it thinks fit to any person who—

(a) is a member of a committee or sub-committee, but

(b) is not a member of the ONR or of the ONR's staff.

(4) Payments made by the ONR under sub-paragraph (3) are to be of such amounts as may be determined by the Secretary of State.

Procedure

17 (1) The ONR may make such provision as it thinks fit to regulate—

(a) its own proceedings (including quorum), and

(b) the proceedings (including quorum) of its committees and sub-committees.

(2) The ONR may, to any extent, permit any of its committees and sub-committees to regulate their own proceedings (including quorum).

(3) The validity of any proceedings of the ONR is not affected by any vacancy among the members or by any defect in the appointment of a member.

(4) The ONR must from time to time publish a summary of its rules and procedures.

Performance of functions

18 (1) The ONR may authorise—

(a) a member of the ONR,

(b) a member of the ONR's staff,

(c) a committee of the ONR of which every member is a member of the ONR or a member of the ONR's staff, or

(d) a sub-committee of a committee within sub-paragraph (c) of which every member is a member of the ONR or a member of the ONR's staff,

to do anything required or authorised to be done by the ONR (and such authorisation may include authorisation to exercise the power conferred on the ONR by this paragraph).

This sub-paragraph is subject to sub-paragraph (3).

(2) An authorisation under sub-paragraph (1) may be general or specific.

(3) Only the following may be authorised to do anything in exercise of a regulatory function of the ONR in a particular case—

(a) a member of the ONR's staff;

(b) a committee of the ONR of which every member is a member of the ONR's staff;

(c) a sub-committee of a committee within paragraph (b) of which every member is a member of the ONR's staff.

(4) Any authorisations given by the ONR under this paragraph must be in writing.

(5) The ONR must publish any authorisations which it gives under this paragraph.

Payment of allowances and expenses

19 The ONR may pay allowances or expenses to any person in connection with the performance of any of its functions.

Indemnities

20 (1) The ONR may, in the circumstances specified in sub-paragraph (2), indemnify persons who are ONR officers against all or any part of any liability which they incur in the execution, or purported execution, of their functions as such ONR officers.

(2) Those circumstances are that the ONR is satisfied that the person in question honestly believed that the act giving rise to the liability—

(a) was within the person's relevant powers, and

(b) was one that the person was required or entitled to do by virtue of the person's position as an ONR officer.

(3) Sub-paragraph (1)—

(a) applies only so far as the ONR is not otherwise required to indemnify ONR officers, and

(b) is not to be taken to affect any other powers that the ONR has to indemnify its members or members of staff or persons appointed by it.

(4) In this paragraph—

"liability" includes damages, costs and expenses (and a reference to liability incurred by a person includes a reference to any such sums which the person is ordered to pay);

"ONR officer" means—

(a) an inspector appointed under Schedule 6;

(b) an inspector appointed by the ONR under article 26(1) of the Regulatory Reform (Fire Safety) Order 2005 (enforcement of Order) (S.I. 2005/1541);

(c) a member of staff of the ONR who is authorised by the Secretary of State under section 4(2)(b) of the Employers' Liability (Compulsory Insurance) Act 1969 (certificates of insurance).

"relevant powers"—

(a) in relation to a person within paragraph (a) or (b) of the definition of "ONR officer", means the powers which the person has in the capacity of an inspector of the kind in question;

(b) in relation to a person within paragraph (c) of that definition means the person's powers under the Employers' Liability (Compulsory Insurance) Act 1969.

Accounts

21 (1) It is the duty of the ONR—

(a) to keep proper accounts and proper records in relation to the accounts;

(b) to prepare in respect of each financial year a statement of accounts in such form as the Secretary of State, with the approval of the Treasury, may direct;

(c) to send copies of the statement to the Secretary of State and the Comptroller and Auditor General before the end of November next following the financial year to which the statement relates.

(2) The Comptroller and the Auditor General must examine, certify and report on the statement and must lay copies of the statement and of the report on it before Parliament.

Strategy

22 (1) The ONR must prepare a strategy for carrying out its functions, including any general priorities it will apply, or principal objectives to which it will have regard, in carrying out its functions.

(2) The ONR must act in accordance with its strategy, or any revision of it, approved under sub-paragraph (7).

(3) Before preparing or revising its strategy the ONR must consult such persons as it considers appropriate.

(4) The first proposal for the ONR's strategy must be submitted to the Secretary of State within 8 months beginning with the day on which this paragraph comes into force.

(5) The ONR—

(a) may review its strategy at any time, and

(b) must do so—

(i) within 5 years beginning with the day on which its strategy is first published, and

(ii) within 5 years beginning with the most recent review of its strategy.

(6) The ONR—

(a) may revise its strategy following a review under sub-paragraph (5), and

(b) must submit any revision of its strategy to the Secretary of State.

(7) The Secretary of State may approve the ONR's strategy, or any revision of it, with or without modifications.

(8) The Secretary of State must consult the ONR before approving with modifications the ONR's strategy or any revision of it.

Annual plan

23 (1) The ONR—

(a) must prepare, for each financial year, a plan for the performance during that year of its functions ("the annual plan"), and

(b) may revise the annual plan.

(2) The ONR must submit the proposed annual plan and any revision of it to the Secretary of State.

(3) The Secretary of State may approve the annual plan and any revision of it with or without modifications.

(4) The Secretary of State must consult the ONR before approving with modifications the ONR's annual plan or any revision of it.

(5) The ONR must take all reasonable steps to act in accordance with the annual plan, or any revision of it, approved under sub-paragraph (3).

Reporting requirements of the ONR

24 (1) As soon as reasonably practicable after the end of the financial year, the ONR must make to the Secretary of State a report on the performance of the ONR's functions during the year.

(2) The report for a financial year must contain—

(a) a general description of what the ONR has done in the exercise of its functions during the year,

(b) a description of how, and the extent to which, what the ONR has done during the year has enabled it to—

(i) act in accordance with its strategy in force during the year, and

(ii) meet any objectives set out in its annual plan, and

(c) a description of any relevant services provided by the ONR during the year to any person, whether or not in the United Kingdom, under section 72(2) (provision of services or facilities).

Laying and publication

25 (1) This paragraph applies to—

(a) the ONR's strategy,

(b) the ONR's annual plan, and any revision of it, approved under paragraph 23(3), and

(c) the report made to the Secretary of State under paragraph 24.

(2) The documents mentioned in sub-paragraph (1) are referred to in this paragraph as "relevant documents".

(3) The Secretary of State must lay a copy of a relevant document before Parliament, together with a statement as to whether any matter has been excluded from that copy in accordance with sub-paragraph (4).

(4) If it appears to the Secretary of State, after consultation with the ONR, that the publication of any matter in a relevant document would be contrary to the interests of national security, the Secretary of State may exclude that matter from the copy of it as laid before each House of Parliament.

(5) The ONR must arrange for a relevant document to be published in the form in which it was laid before each House of Parliament under sub-paragraph (3).

(6) Nothing in this paragraph or paragraphs 22 to 24 is to be taken—

(a) to permit the disclosure of information whose disclosure is prohibited under section 80 (restrictions on disclosure of information),

(b) to affect the obligations of the ONR under the Freedom of Information Act 2000, or

(c) to require the disclosure of information which the ONR would not be required to disclose under—

(i) that Act, or

(ii) environmental information regulations within the meaning given in section 39(1A) of that Act.

Payments and borrowing

26 (1) The Secretary of State must pay to the ONR such sums as are approved by the Treasury and as the Secretary of State considers appropriate for the purpose of enabling the ONR to perform its functions.

(2) The ONR may, with the consent of the Secretary of State, borrow money.

(3) The ONR may not borrow money if the effect of the borrowing would be to cause the aggregate amount outstanding in respect of the principal of sums borrowed by the ONR to be, or to remain, in excess of the ONR's borrowing limit.

(4) The ONR's borrowing limit is £35 million.

(5) The Secretary of State may by order amend sub-paragraph (4) so as to substitute, for the sum for the time being specified in that sub-paragraph, the sum specified in the order, which must not be—

(a) less than £35 million, or

(b) greater than £80 million.

(6) Before making an order under this paragraph, the Secretary of State must consult the ONR.

Supplementary powers

27 (1) The ONR may do anything which is calculated to facilitate, or is conducive or incidental to, the performance of its functions.

(2) The power in sub-paragraph (1) is subject to any restrictions imposed by or under any provision of any enactment.

Financial year

28 (1) In this Part of this Act "financial year" means a period of 12 months ending with 31st March.

(2) But the first financial year of the ONR is—

(a) the period beginning with the date on which section 58 comes into force and ending with the following 31st March, or

(b) if the Secretary of State so directs, such other period not exceeding 2 years as may be specified in the direction.

SCHEDULE 6

Section 63

INSPECTORS

PART 1

APPOINTMENT AND POWERS OF INSPECTORS

Appointment of inspectors

1 (1) The ONR may appoint persons (referred to in this Part of this Act as "inspectors") to carry into effect the relevant statutory provisions.

(2) Any person appointed as an inspector must be someone who appears to the ONR to be suitably qualified to carry out the functions that the ONR authorises the person to carry out.

(3) The appointment of an inspector under this paragraph is to be on such terms as the ONR may determine and may be terminated by the ONR at any time.

(4) The appointment of an inspector under this paragraph must be made by a written instrument.

(5) References in this Schedule to carrying into effect the relevant statutory provisions include in particular assisting the ONR to fulfil its duty under section 74.

Powers of inspectors

2 (1) An inspector has the relevant powers for the time being specified in the inspector's instrument of appointment.

(2) Those powers are exercisable by the inspector only to the extent specified in the instrument of appointment.

(3) An inspector's instrument of appointment may be altered by the ONR by a further instrument in writing, so far as it specifies—

(a) the inspector's relevant powers, and

(b) the extent to which they are exercisable.

(4) In this paragraph, "relevant power" means a power of inspectors which is—

(a) specified by a relevant statutory provision, and

(b) exercisable by an inspector only to the extent that it is conferred on the inspector under this paragraph by virtue of the instrument of appointment.

(5) When exercising or seeking to exercise any relevant power, an inspector must, if so requested, produce the instrument of appointment or a duly authenticated copy of it.

PART 2

POWERS EXERCISABLE BY INSPECTORS AUTHORISED BY INSTRUMENT OF APPOINTMENT: IMPROVEMENT NOTICES AND PROHIBITION NOTICES

Improvement notices

3 (1) This paragraph applies where an inspector is of the opinion that a person—
(a) is contravening one or more applicable provisions, or
(b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated.

(2) The inspector may, if authorised, give the person a notice (an "improvement notice") requiring the person to remedy—
(a) the contravention, or
(b) as the case may be, the matters giving rise to the notice,
within the period specified in the notice.

(3) The improvement notice must—
(a) specify the applicable provision or provisions in question, and
(b) state that the inspector is of the opinion mentioned in sub-paragraph (1) and set out the reasons for it.

(4) The period specified under sub-paragraph (2) must end no earlier than the period within which an appeal against the notice may be brought under paragraph 6.

(5) In this paragraph "applicable provision" means any of the relevant statutory provisions other than—
(a) a provision of the Nuclear Safeguards Act 2000, or
(b) any provision of nuclear regulations identified in accordance with section 55(10) (requirement for provisions made for nuclear security purposes or nuclear safeguards purposes, or both, to be identified as such).

Prohibition notices

4 (1) This paragraph applies where an inspector is of the opinion that—
(a) relevant activities, as they are being carried on by or under the control of a person, involve a risk of serious harm to health, or
(b) relevant activities which are likely to be carried on by or under the control of a person will, as so carried on, involve a risk of serious harm to health.

(2) The inspector may, if authorised, give the person a notice ("a prohibition notice") directing that the activities to which the notice relates must not be carried on by or under the control of the person unless the following have been remedied—
(a) the matters specified in the notice under sub-paragraph (3)(b), and
(b) any associated contraventions of provisions specified under sub-paragraph (3)(c).

(3) A prohibition notice must—

(a) state that the inspector is of the opinion mentioned in sub-paragraph (1);

(b) specify the matters which in the inspector's opinion give, or, as the case may be, will give rise to the risk mentioned in that sub-paragraph;

(c) where in the inspector's opinion any of those matters involves or, as the case may be, will involve a contravention of any applicable provision—

(i) specify the provision or provisions in question, and

(ii) state that the inspector is of that opinion and set out the reasons for it.

(4) A prohibition notice takes effect—

(a) at the end of the period specified in the notice, or

(b) if the notice so specifies, immediately.

(5) In this paragraph—

"applicable provision" has the same meaning as in paragraph 3;

"relevant activities" means any activities in relation to which any applicable provision applies (or would apply if they were being carried on).

Improvement and prohibition notices: supplementary

5 (1) In this paragraph "a notice" means an improvement notice or a prohibition notice.

(2) A notice may (but need not) include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates.

(3) Any such directions—

(a) may be expressed by reference to any approved code of practice; and

(b) may afford the person to whom the notice is given a choice between different ways of remedying the contravention or matter.

(4) Sub-paragraph (5) applies where—

(a) any of the applicable provisions applies to a building or any matter connected with a building, and

(b) an inspector proposes to serve an improvement notice relating to a contravention of that provision in connection with the building or matter.

For this purpose "applicable provision" has the same meaning as in paragraph 3.

(5) The notice must not direct any measures to be taken to remedy the contravention that are more onerous than any measures that would be necessary to secure conformity with—

(a) current new-build requirements, or

(b) if the provision in question imposes specific requirements that are more onerous than the requirements of any current new-build requirements, those specific requirements.

(6) In sub-paragraph (5), "current new-build requirements", in relation to a building, or matter connected with a building, means the requirements of any building regulations for the time being in force to which the building or

matter would be required to conform if the relevant building were being newly erected.

(7) In sub-paragraph (6), "building regulations", in relation to Scotland, has the meaning given by section 1 of the Building (Scotland) Act 2003 (asp 8).

(8) An inspector must consult the fire and rescue authority before giving a notice in connection with any premises if—

(a) the premises are used, or are about to be used, as a place of work, and

(b) the notice would require, or be likely to lead to, measures affecting the means of escape in case of fire with which the premises are, or ought to be, provided.

(9) In sub-paragraph (8) "fire and rescue authority", in relation to premises, means—

(a) in England and Wales—

(i) where the Regulatory Reform (Fire Safety) Order 2005 applies to the premises, the enforcing authority within the meaning given by article 25 of that Order;

(ii) in any other case, the fire and rescue authority under the Fire and Rescue Services Act 2004 for the area where the premises are (or are to be) situated;

(b) in Scotland—

(i) where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies in relation to the premises, the enforcing authority (as defined in section 61(9) of that Act);

(ii) in any other case, the relevant authority (as defined in section 6 of that Act) for the area where the premises are (or are to be) situated.

(10) Where an improvement notice or a prohibition notice which is not to take immediate effect has been given—

(a) the notice may be withdrawn by an inspector at any time before the end of the period specified in it under paragraph 3(2) or 4(4)(a), and

(b) the period so specified may be extended or further extended by an inspector at any time when an appeal against the notice is not pending.

Appeal against improvement or prohibition notice

6 (1) In this paragraph, "a notice" means an improvement notice or a prohibition notice.

(2) A person to whom a notice is given may appeal within such period after the notice is given as may be prescribed by regulations made by the Secretary of State ("the prescribed period").

(3) An appeal under this paragraph lies to an employment tribunal.

(4) On an appeal, the tribunal may—

(a) cancel the notice, or

(b) confirm it—

(i) in its original form, or

(ii) with such modifications as, in the circumstances, the tribunal thinks fit.

(5) Where an appeal under this paragraph is brought against an improvement notice within the prescribed period, the operation of the notice is suspended until the appeal is withdrawn or finally disposed of.

(6) Where—

(a) an appeal under this paragraph is brought against a prohibition notice within the prescribed period, and

(b) on the application of the appellant, the tribunal, so directs,

the operation of the notice is suspended from the time the direction is given until the appeal is withdrawn or finally disposed of.

(7) One or more assessors may be appointed for the purposes of any proceedings brought before an employment tribunal under this paragraph.

Improvement and prohibition notices: offences

7 (1) It is an offence to contravene any requirement or prohibition imposed by an improvement notice or a prohibition notice.

(2) A person who commits an offence under this paragraph is liable, in England and Wales or Scotland—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding £20,000, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.

(3) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's powers to imprison), the reference in sub-paragraph (2)(a), as it has effect in England and Wales, to 12 months is to be read as a reference to 6 months.

PART 3

OTHER POWERS EXERCISABLE BY INSPECTOR IF AUTHORISED BY INSTRUMENT OF APPOINTMENT

Power of entry

8 (1) An inspector may, if authorised, enter any premises which the inspector has reason to believe it is necessary for the inspector to enter for the relevant purpose.

(2) The power may be exercised—

(a) at any reasonable time, or

(b) at any time—

(i) in a situation which in the inspector's opinion is or may be dangerous;

(ii) in a situation in which, in the inspector's opinion, delay would or might be prejudicial to the nuclear security purposes.

and may be exercised in relation to premises outside the United Kingdom and its territorial sea so far as necessary for the relevant purpose.

Power to take persons and equipment etc onto premises

9 In exercising the power mentioned in paragraph 8, an inspector may—

(a) be accompanied—

(i) by any person approved by the ONR for the purpose, and

(ii) if the inspector has reasonable cause to expect any serious obstruction in the exercise of any of the inspector's powers, by a constable, and

(b) take along any equipment and materials required for the relevant purpose.

Power to deal with cause of imminent danger

10 (1) An authorised inspector who finds any article or substance in relevant premises in circumstances in which the inspector has reasonable cause to believe it is a cause of imminent danger of serious harm to health may do any of the following—

(a) seize the article or substance;

(b) cause it to be made harmless or the risk of harm from it to be reduced (in either case, by destruction or otherwise);

(c) for the purpose mentioned in paragraph (b), seize any other article or substance.

(2) Before any article that forms part of a batch of similar articles, or any substance, is dealt with under sub-paragraph (1)(b), the inspector must, if it is practicable,—

(a) take a sample, and

(b) give a portion of the sample, marked so as to be identifiable, to a responsible person.

(3) As soon as practicable after seizing or dealing with any article or substance under sub-paragraph (1), the inspector must make and sign a written report setting out the circumstances in which the article or substance was seized or so dealt with.

(4) The inspector must give a signed copy of the report to a responsible person.

(5) If that person is not the owner of the article or substance, the inspector must also—

(a) give a signed copy of the report to the owner, or

(b) if the inspector cannot find out the owner's name or address after making reasonable enquiries (and the owner has not indicated a willingness in accordance with section 85 to receive a signed copy of the report by any means mentioned in subsection (1)(b) of that section), give a further signed copy of the report to that responsible person.

(6) For the purposes of this paragraph—

(a) "responsible person", in relation to any article or substance, means a responsible person at the premises in which the inspector finds the article or substance;

(b) in the case of a report in electronic form, any signature required on the report or a copy of it may be an electronic signature (within the meaning given in section 7(2) of the Electronic Communications Act 2000).

Powers exercisable in relation to particular articles or substances or in particular circumstances

11 (1) An authorised inspector may cause any article or substance in relevant premises—
(a) to be dismantled;
(b) to be tested;
(c) to have any other process applied to it.

(2) The inspector may exercise any of those powers only if it appears to the inspector—
(a) that the article or substance has caused, or is likely to cause, danger to health or safety, or
(b) that it is desirable to do so for the nuclear security purposes.

(3) Before exercising a power in this paragraph, the inspector must consult anyone who appears to the inspector to be appropriate about the dangers (if any) of what is proposed.

(4) Anything done to the article or substance under this paragraph must not damage or destroy it unless in the circumstances that is unavoidable for the relevant purpose.

(5) If requested by a person who has responsibilities in relation to the relevant premises, and is on the premises, the inspector must allow anything done to the article or substance under this paragraph to be done in that person's presence, unless the inspector considers that that would be prejudicial to national security.

12 (1) An authorised inspector may take possession of any article or substance found on relevant premises and retain it for as long as necessary—
(a) for it to be examined;
(b) for anything to be done to it which the inspector may cause to be done under paragraph 11;
(c) to ensure that it is not tampered with before any examination or other procedure mentioned in paragraph (a) or (b) is complete;
(d) to ensure that it is available for use in—
(i) any proceedings for an offence under the relevant statutory provisions, or
(ii) any proceedings relating to an improvement notice or a prohibition notice.

(2) The inspector may exercise that power only if it appears to the inspector—
(a) that the article or substance has caused, or is likely to cause, danger to health or safety, or
(b) that it is desirable to do so for the nuclear security purposes.

(3) Before taking possession of any substance under this paragraph, the inspector must, if it is practicable,—
(a) take a sample of it, and
(b) give a portion of the sample, marked so as to be identifiable, to a responsible person at the premises.

(4) An inspector who takes possession of any article or substance under this paragraph must—

(a) if it is practicable to do so, give a notice to that effect to a responsible person at the premises;
(b) otherwise, fix such a notice in a conspicuous position at the premises.

(5) The notice must include sufficient information about the article or substance to identify it.

Powers of inspection and examination and to take samples

13 (1) An authorised inspector may carry out any examination or investigation necessary for the relevant purpose and, in doing so, may—
(a) take measurements and photographs, and
(b) make recordings.

(2) An authorised inspector may take and deal with samples of—
(a) any article or substance found in relevant premises, or
(b) the atmosphere in or in the vicinity of relevant premises.

(3) The Secretary of State may by regulations make provision about—
(a) the procedure to be followed in taking any such samples, and
(b) the way in which any such samples are to be dealt with.

14 (1) An authorised inspector may direct that any relevant premises, or any article or substance in them, must be left undisturbed for as long as reasonably necessary for the purposes of any examination or investigation necessary for the purpose of any of the relevant statutory provisions.

(2) A direction under sub-paragraph (1)—
(a) may relate to part of any relevant premises;
(b) may relate to particular aspects of any premises or article or substance.

Powers to require information and documents

15 (1) An authorised inspector may require any person whom the inspector has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph 13—
(a) to answer any question the inspector thinks fit, and
(b) to sign a declaration of the truth of the person's answers.

(2) Where a person required to answer questions under this paragraph has nominated another person to be present, the person may not be required to answer questions except in the presence of the nominated person (if any).

(3) When exercising the power in this paragraph, an inspector may allow another person to be present (in addition to the nominated person (if any)).

(4) No answer given by a person by virtue of this paragraph is admissible in evidence against the person, or the person's spouse or civil partner, in any proceedings.

16 (1) An authorised inspector may—
(a) require any relevant documents to be produced, and
(b) inspect and take copies of (or of any information in) any relevant documents.

(2) For this purpose—
(a) "document" includes information recorded in any form;
(b) "relevant document" means a record or other document which—
(i) is required to be kept by virtue of any of the relevant statutory provisions, or
(ii) the inspector needs to see for the purposes of any examination or investigation under paragraph 13.

(3) In the case of a relevant document that consists of information held in electronic form, the inspector may—
(a) require it to be produced—
(i) in a legible form, or
(ii) in a form from which it can readily be produced in a legible form, and
(b) require access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with the relevant document.

Offences

17 (1) It is an offence for a person to contravene any requirement imposed by an inspector under this Part of this Schedule.

(2) It is an offence for a person to prevent or attempt to prevent any other person from—
(a) appearing before an inspector, or
(b) answering any question to which an inspector may require an answer by virtue of paragraph 15.

(3) It is an offence for a person—
(a) to make a statement which the person knows to be false, or
(b) recklessly to make a statement which is false,
in purported compliance with a requirement imposed by an inspector under this Part of this Schedule.

(4) A person who commits an offence under this paragraph is liable—
(a) on summary conviction, to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland), or a fine not exceeding £20,000, or both;
(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.

(5) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's powers to imprison), the reference in sub-paragraph (4)(a), as it has effect in England and Wales, to 12 months is to be read as a reference to 6 months.

18 (1) It is an offence for a person intentionally to obstruct an inspector in the exercise or performance of the inspector's functions.

(2) A person who commits an offence under this paragraph is liable on summary conviction to imprisonment for a term not exceeding 51 weeks (in England and Wales), 12 months (in Scotland) or 6 months (in Northern Ireland), or a fine not exceeding level 5 on the standard scale, or both.

(3) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for summary offences), the reference in sub-paragraph (2), as it has effect in England and Wales, to 51 weeks is to be read as a reference to 6 months.

19 (1) It is an offence for a person falsely to pretend to be an inspector.

(2) A person who commits an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Supplementary powers

20 An inspector authorised to exercise any power mentioned in this Schedule to any extent may require any person to provide any facilities or assistance which—

(a) relates to matters or things—

(i) within the person's control, or

(ii) in relation to which the person has responsibilities, and

(b) the inspector needs in order to exercise the power to that extent.

21 (1) Any power mentioned this Schedule which an inspector is authorised to exercise includes power to do anything incidental that is necessary for the relevant purpose.

(2) Nothing in sub-paragraph (1) is to be taken to allow the inspector to exercise any power mentioned in this Schedule to any extent (unless the inspector is authorised to exercise it to that extent).

Protection for documents subject to legal professional privilege etc

22 Nothing in this Part of this Schedule is to be taken to confer power to compel the production by any person of a document or information in respect of which—

(a) in England and Wales or Northern Ireland, a claim to legal professional privilege, or

(b) in Scotland, a claim to confidentiality of communications,

could be maintained in legal proceedings.

PART 4

SUPPLEMENTARY

Restrictions on disclosure of information

23 (1) In this paragraph, "protected information" means information obtained by an inspector as a result of the exercise of any relevant power, including in particular information with respect to any trade secret obtained on premises entered by the inspector in exercise of a relevant power.

(2) Protected information must not be disclosed except—

(a) for the purposes of the inspector's functions,

(b) for the purposes of any legal proceedings, ONR inquiry, or investigation held by virtue of section 64,

(c) for the purposes of any report of any such proceedings or ONR inquiry or of a special report made under section 64,

(d) with the consent of the person having responsibilities in relation to the premises where the inspector obtained the information, or

(e) in accordance with sub-paragraph (3) or paragraph 24.

(3) The inspector may provide to a person who appears to the inspector to be likely to be a party to any civil proceedings arising out of any accident, occurrence, situation or other matter, a written statement of relevant facts observed by the inspector in the course of exercising any relevant power.

(4) It is an offence for a person to disclose information in contravention of this paragraph.

(5) A person who commits an offence under sub-paragraph (4) is liable—

(a) on summary conviction to—

(i) imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland),

(ii) a fine not exceeding the statutory maximum, or

(iii) both;

(b) on conviction on indictment to—

(i) imprisonment for a term not exceeding 2 years,

(ii) a fine, or

(iii) both.

(6) In the application of sub-paragraph (5) to England and Wales in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's power to imprison), the reference in sub-paragraph (5)(a)(i) to 12 months is to be read as a reference to 6 months.

(7) In this paragraph "relevant power" in relation to an inspector, means a power specified in this Schedule which the inspector is authorised to exercise by virtue of the instrument of appointment.

Duty to provide information to employees or their representatives

24 (1) An inspector must provide to people employed at any premises (or their representatives) any relevant information needed if they (or their representatives) are to be kept adequately informed about matters affecting their health, safety or welfare.

(2) Where information is provided to employees (or their representatives) under sub-paragraph (1), the inspector must provide the same information to their employer.

(3) For this purpose—

(a) "relevant information", in relation to any premises, means—

(i) factual information which is protected information within the meaning of paragraph 23 and is relevant to the premises, and

(ii) information about action which the inspector has taken or proposes to take in relation to the premises, and

(b) "employee", "employer" and "employed" have the same meanings as in Part 1 of the Health and Safety at Work etc. Act 1974.

Interpretation

25 (1) In this Schedule—

"offshore installation" means any installation which is intended for underwater exploitation of mineral resources or exploration with a view to such exploitation;

"premises" includes any place and, in particular, includes—

(a) any vehicle, vessel, aircraft or hovercraft,

(b) any installation on land (including the foreshore and other land intermittently covered by water), any offshore installation, and any other installation (whether floating, or resting on the seabed or its subsoil, or resting on other land covered with water or its subsoil), and

(c) any tent or movable structure;

"relevant premises", in relation to an inspector, means premises which the inspector is authorised to enter in exercise of a power specified in this Schedule;

"the relevant purpose", in relation to a power, means—

(a) if an instrument of appointment authorises the inspector to exercise the power only for limited purposes, that purpose;

(b) in any other case, the purpose of carrying into effect the relevant statutory provisions;

"substance" means any natural or artificial substance, whether solid or liquid or in the form of a gas or vapour.

(2) In this Schedule, references to an inspector, in relation to any power, are to the inspector exercising or proposing to exercise the power.

(3) For the purposes of this Schedule, an inspector is an authorised inspector in relation to a power to the extent that the power is exercisable by the inspector under paragraph 2 by virtue of the inspector's instrument of appointment.

SCHEDULE 7

Section 82

PROVISIONS RELATING TO OFFENCES

Interpretation

1 (1) In this Schedule "offence" means an offence created by or under a relevant statutory provision.

(2) For the purposes of this Schedule "relevant statutory provision" does not include any provisions of or made under the Nuclear Safeguards Act 2000.

Venue

2 (1) If an offence is committed in connection with any plant or substance, the offence may be treated as having been committed at the place where the plant or substance is for the time being.

(2) Sub-paragraph (1) applies only if it is necessary to treat the offence as having been committed there for the purpose of conferring jurisdiction on any court to entertain proceedings for the offence.

(3) In this paragraph—

"plant" includes any machinery, equipment or appliance;

"substance" means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.

(4) This paragraph is subject to any provision made in nuclear regulations by virtue of section 55(7)(b) (treatment of offences as having been committed at a specified place).

Extension of time for bringing summary proceedings

3 (1) This paragraph applies where—

(a) a special report on a matter is made under section 64(1);

(b) a report is made by a person holding an ONR inquiry;

(c) a coroner's inquest is held into a relevant death; or

(d) a public inquiry under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 is held into a relevant death.

(2) A "relevant death" is the death of any person which may have been caused—

(a) by an accident which happened while at work,

(b) by a disease which the person contracted (or probably contracted) while at work, or

(c) by an accident, act or omission which occurred in connection with the work of any person.

(3) Sub-paragraph (4) applies if it appears from—

(a) the report mentioned in sub-paragraph (1)(a) or (b),

(b) the inquest mentioned in sub-paragraph (1)(c), or

(c) the proceedings at the inquiry mentioned in sub-paragraph (1)(d),

that a relevant statutory provision was contravened at a time which is material in relation to the subject-matter of the report, inquest or inquiry.

(4) Summary proceedings against any person liable to be proceeded against in respect of the contravention may be commenced at any time within 3 months of—

(a) the making of the report in question, or

(b) (as the case may be) the conclusion of the inquest or inquiry.

(5) The following apply for the purposes of sub-paragraph (2) as they apply for the purposes of the Health and Safety at Work etc. Act 1974—

(a) section 52(1) of that Act (meaning of "work" and "at work");

(b) the power conferred by section 52(2)(a) of that Act to extend the meaning of "work" and "at work".

4 (1) This paragraph applies to any offence that a person commits as a result of a provision or requirement that the person is subject to as the designer, manufacturer, importer or supplier of any thing.

(2) Summary proceedings for the offence may be commenced at any time within 6 months from the date on which there comes to the knowledge of the ONR evidence that appears sufficient to the ONR—

(a) to justify a prosecution for the offence, or

(b) in relation to an offence in Scotland, to justify a report to the Lord Advocate with a view to consideration of the question for prosecution.

(3) For this purpose—

(a) a certificate of the ONR stating that such evidence came to its knowledge on a specified date is to be taken as conclusive evidence of that fact;

(b) a document purporting to be such a certificate, and to be signed on behalf of the ONR, is to be presumed to be such a certificate unless the contrary is proved; and

(c) in relation to an offence in Scotland, section 136(3) of the Criminal Procedure (Scotland) Act 1995 (date of commencement of proceedings) has effect as it has effect for the purposes of that section.

Continuation of offences

5 (1) This paragraph applies where an offence is committed as a result of a failure to do something at or within a time fixed by or under a relevant statutory provision.

(2) The offence is to be deemed to continue until the thing is done.

Offences due to fault of other person

6 (1) A person ("A") is guilty of an offence if—

(a) another person ("B") commits the offence, and

(b) B's commission of the offence is due to the act or default of A,

and A is liable to be proceeded against and dealt with accordingly.

(2) For this purpose it does not matter whether or not proceedings are taken against B.

(3) A person ("A") is guilty of an offence if—

(a) A is a person other than the Crown,

(b) the offence would have been committed by the Crown but for the fact that the provision under which the offence is committed does not bind the Crown, and

(c) the Crown's commission of the offence would have been due to the act or default of A,

and A is liable to be proceeded against and dealt with accordingly.

(4) This paragraph is subject to any provision made in nuclear regulations by virtue of section 55(7).

Offences by bodies corporate

7 (1) Where an offence committed by a body corporate is proved—

(a) to have been committed with the consent or connivance of an officer of the body corporate, or

(b) to be attributable to neglect on the part of an officer of the body corporate,

that officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.

(2) In sub-paragraph (1) officer, in relation to a body corporate, means—

(a) any director, manager, secretary or other similar officer of the body corporate, or

(b) any person purporting to act in any such capacity.

(3) In sub-paragraph (2) "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Restriction on institution of proceedings in England and Wales

8 Proceedings for an offence in England and Wales may only be instituted—

(a) by the ONR or an inspector, or

(b) by, or with the consent of, the Director of Public Prosecutions.

Prosecutions by inspectors

9 (1) An inspector may prosecute proceedings for an offence before a magistrates' court if authorised to do so by the person who appointed the inspector.

(2) This paragraph does not apply—

(a) to proceedings for an offence in Scotland, or

(b) to proceedings for an offence under a provision contained in nuclear regulations that is identified in accordance with section 55(10) (requirement for provisions made for nuclear security purposes or nuclear safeguards purposes, or both, to be identified as such).

Onus of proving limits of what is practicable etc

10 (1) This paragraph applies if regulations under this Part create an offence consisting of—

(a) a failure to comply with a duty or requirement to do something so far as practicable (or reasonably practicable), or

(b) a failure to use the best means do something.

(2) The regulations may provide that it is for the defendant to prove that—

(a) it was not practicable (or reasonably practicable) to do more than was in fact done to satisfy the duty or requirement, or

(b) there was no better practicable means than was in fact used to satisfy the duty or requirement.

Evidence

11 (1) This paragraph applies where a requirement is imposed by a relevant statutory provision for an entry to be made in any register or other record.

(2) If the entry is made, it is—

(a) admissible in evidence, or

(b) in Scotland, sufficient evidence of the facts stated in the entry,

against the person by or on whose behalf the entry is made.

(3) If the entry is not made, and the requirement relates to making the entry in respect of observance with a relevant statutory provision, the fact that the entry is not made—

(a) is admissible in evidence, or

(b) in Scotland, sufficient evidence that the provision has not been observed.

Power of court to order cause of offence to be remedied

12 (1) This paragraph applies where—

(a) a person ("P") is convicted of an offence, and

(b) it appears to the court that the matters in respect of which P is convicted are matters that are within P's power to remedy.

(2) The court may (in addition to, or instead of, imposing any punishment) order P to take such steps as the order may specify for the purpose of remedying those matters.

(3) The steps are to be taken within such time as may be fixed by the order ("the remedial period").

(4) The court may extend or further extend the remedial period on an application.

(5) An application under sub-paragraph (4) must be made—

(a) before the end of the remedial period, or

(b) before the end of that period as extended on a previous application.

(6) Where P is ordered to remedy any matters by an order under this paragraph, P is not liable under any relevant statutory provision in respect of those matters to the extent that they continue during—

(a) the remedial period, or

(b) any extension of that period granted under sub-paragraph (4).

SCHEDULE 8

Section 90

TRANSFERS TO THE OFFICE FOR NUCLEAR REGULATION

PART 1

INTRODUCTORY

1 In this Schedule—

"the HSE" means the Health and Safety Executive;

"the interim ONR" means the agency of the HSE currently known as the Office for Nuclear Regulation;

"Act" includes an Act of the Scottish Parliament;

"subordinate legislation" has the meaning given in 21(1) of the Interpretation Act 1978 and includes an instrument made under an Act of the Scottish Parliament.

2 A staff transfer scheme or a property transfer scheme may make—

(a) different provision for different cases;
(b) such consequential, supplemental, incidental and transitional provisions as the Secretary of State considers appropriate.

PART 2

STAFF TRANSFER SCHEMES

Power to make staff transfer schemes

3 (1) The Secretary of State may by order make one or more schemes under which an employee to whom the scheme applies becomes an employee of ONR (but this is subject to provision contained in the scheme by virtue of paragraph 7).

(2) A scheme under sub-paragraph (1) is referred to in this Schedule as a "staff transfer scheme".

Staff to whom a transfer may apply

4 (1) The employees to whom a transfer scheme may apply are those employees who fall within sub-paragraph (2).

(2) An employee falls within this sub-paragraph if, immediately before the staff transfer scheme comes into force, the employee—
(a) was employed by the HSE under a contract of employment, and
(b) was either assigned to work in the interim ONR or on a relevant secondment.

(3) Sub-paragraph (4) applies for the purposes of determining whether an employee was assigned as mentioned in sub-paragraph (2) where, immediately before the transfer scheme comes into force, the employee is on secondment or otherwise temporarily absent.

(4) That sub-paragraph is to be read as if it operated immediately before the date of the secondment or the date when the absence began instead of immediately before the date on which the scheme came into force.

(5) In sub-paragraph (2)(b) a relevant secondment is one where—
(a) the person was, on 24 October 2011, on secondment from the team known as the Radioactive Materials Transport Team in that part of the Department of Transport known as the Dangerous Goods Division, and
(b) remains on that secondment on the date on which the staff transfer scheme comes into force.

Content of a staff transfer scheme

5 (1) A staff transfer scheme may make provision for giving full effect to an employee's transfer into the employment of the ONR as a result of the scheme.

(2) Provision made by virtue of sub-paragraph (1) may include provision—
(a) about the employee's contract of employment;
(b) about the continuity of the employee's employment and the treatment of past service of the employee;

(c) modifying the law (including provision made by an Act or subordinate legislation) applicable to the employee's employment;

(d) about the pension entitlements of the employee enjoyed immediately before the transfer.

6 (1) A staff transfer scheme may apply to all, or to any specified class or description of, the employees falling with paragraph 4(2) or to specified employees so falling.

(2) "Specified" means specified in the scheme.

7 (1) A staff transfer scheme may make provision enabling an employee to object to the transfer which would otherwise be effected by the scheme including provision as to how such an objection is to be made and as to the consequences of it.

(2) A staff transfer scheme may make provision allowing an employee to be treated as being seconded to the ONR for a period limited by the scheme, whether at the employee's election or in the exercise of a discretion conferred on the Secretary of State by the scheme.

(3) Provision made by virtue of sub-paragraph (2) may include provision—

(a) allowing the employee to elect to end the period of secondment by agreeing to become an employee of the ONR or by objecting to the transfer under sub-paragraph (1);

(b) as to the consequences of the expiry of the period of secondment without such an election having been made;

(c) as to the employee's pay (and the liability to pay it) and the terms and conditions on which the employee is to be engaged.

8 A staff transfer scheme may make provision permitting or requiring the disclosure of information of a specified description from the HSE to the ONR.

9 (1) A staff transfer scheme may make provision treating anything done by or to the employee's employer before the scheme came into force as having been done by or to the ONR.

(2) A staff transfer scheme may also make provision preventing anything done to or by the employee's employer before the scheme came into force being treated as having been done to or by the ONR.

PART 3

PROPERTY TRANSFER SCHEMES

Power to make property transfer schemes

10 (1) The Secretary of State may by order make one or more schemes transferring qualifying property, rights and liabilities of the HSE to the ONR.

(2) The Secretary of State may by order make one or more schemes transferring qualifying property, rights and liabilities of the Secretary of State to the ONR.

(3) A scheme under sub-paragraph (1) or (2) is referred to in this Schedule as a "property transfer scheme".

11 The HSE may submit to the Secretary of State proposals about the exercise of the power to make property transfer schemes.

Qualifying property

12 (1) References in this Part to "qualifying property, rights and liabilities" are to property held, and rights and liabilities arising, in connection with—

(a) functions under any enactment which were functions of the Secretary of State or the HSE and have as a result of this Act become functions of the ONR;

(b) functions which were functions of the Secretary of State or the HSE which have been replaced by a function of the ONR under this Act;

(c) functions which were carried out by the HSE under an agreement under section 13 of the Health and Safety at Work etc. Act 1974 and which are to be carried out by ONR under an agreement under section 71.

(2) Rights and liabilities arising under or in connection with a contract of employment is in effect when the scheme comes into force are excluded from the rights and liabilities which may be transferred under a property transfer scheme.

Content of a property transfer scheme

13 (1) A property transfer scheme may, in particular, make provision—

(a) for anything done by or in relation to the HSE or the Secretary of State in connection with any property, rights or liabilities transferred by the scheme to be treated as done, or to be continued, by or in relation to the ONR;

(b) for references to the HSE or the Secretary of State in any agreement (whether written or not), instrument or other document relating any property, rights or liabilities transferred by the scheme to be treated as references to the ONR;

(c) about the continuation of legal proceedings;

(d) for transferring property, rights or liabilities which could not otherwise be transferred or assigned;

(e) for transferring property, rights and liabilities irrespective of any requirement for consent which would otherwise apply;

(f) for preventing a right of pre-emption, right of reverter, right of forfeiture, right to compensation or other similar right from arising or becoming exercisable as a result of the transfer of property, rights or liabilities;

(g) for dispensing with any formality in relation to the transfer of property, rights or liabilities by the scheme

(h) for transferring property acquired, or rights or liabilities arising, after the scheme is made but before it takes effect;

(i) for apportioning property, rights or liabilities;

(j) for creating rights, or imposing liabilities, in connection with property, rights or liabilities transferred by the scheme;

(k) for requiring ONR to enter into any agreement of any kind, or for a purpose, specified in or determined in accordance with the scheme.

(2) Sub-paragraph (1)(b) does not apply to references in an Act or in subordinate legislation.

(3) In this Part "property" includes interests of any description.

Compensation

14 A scheme may contain provision for the payment of compensation by the Secretary of State to any person whose interests are adversely affected by it.

PART 4

PROCEDURE FOR MAKING SCHEMES UNDER THIS SCHEDULE

15 Before making a staff transfer scheme or a property transfer scheme, the Secretary of State must consult those persons that the Secretary of State considers likely to be affected by the making of the scheme and such other persons as appear to the Secretary of State to represent the interests of such persons.

SCHEDULE 9

Section 9

MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO PART 2

PART 1

AMENDMENTS OF THE HEALTH AND SAFETY AT WORK ETC. ACT 1974

Health and Safety at Work etc. Act 1974

1 The Health and Safety at Work etc. Act 1974 is amended as follows.

2 In section 7 (general duties of employees at work), after "relevant statutory provisions" insert "or relevant nuclear provisions".

3 In section 8 (duty not to interfere with or misuse things provided pursuant to certain provisions), at the end insert "or relevant nuclear provisions".

4 In section 9 (duty not to charge employees for things done or provided pursuant to certain specific requirements), at the end insert "or relevant nuclear provisions".

5 (1) Section 11 (functions of the Health and Safety Executive) is amended as follows.

(2) In subsection (4)—

(a) in paragraph (a), for "the railway safety purposes" substitute "any of the transferred purposes", and

(b) in paragraph (b), for the words following "made" substitute "—

(i) for any of the transferred purposes, or

(ii) under section 43 and concern fees relating to nuclear site regulation."

(3) After that subsection insert—

"(4A) In subsection (4)—

(a) "the transferred purposes" means—

(i) the railway safety purposes;

(ii) the nuclear safety purposes;

(iii) the nuclear security purposes;

(iv) the nuclear safeguards purposes;

(v) the radioactive material transport purposes;

(b) "fees relating to nuclear site regulation" means fees payable for or in connection with the performance of a function by or on behalf of—

(i) the Office for Nuclear Regulation, or

(ii) any inspector appointed by the Office for Nuclear Regulation.

(4B) The Executive may submit to the Secretary of State any proposal submitted to it by the Office for Nuclear Regulation under section 61 of the Energy Act 2012 (proposals about orders and regulations)."

6 In section 13 (powers of the Executive), after subsection (6) insert—

"(6A) The reference in subsection (6) to the general purposes of this Part does not include a reference to any of the following—

(a) the nuclear safety purposes;

(b) the nuclear security purposes;

(c) the nuclear safeguards purposes;

(d) the radioactive material transport purposes."

7 (1) Section 14 (power of the Executive to direct investigations and inquiries) is amended as follows.

(2) In subsection (1)(a), after "railway safety purposes" insert "or the ONR's purposes".

(3) After subsection (4) insert—

"(4A) Provision that may be made by virtue of subsection (4)(a) includes in particular, provision conferring functions on the Office for Nuclear Regulation in relation to powers of entry and inspection in relation to sites for which it an enforcing authority."

8 (1) Section 15 (health and safety regulations) is amended as follows.

(2) After subsection (1) insert—

"(1A) In subsection (1), the reference to the general purposes of this Part does not include a reference to any of the following—

(a) the nuclear safety purposes;

(b) the nuclear security purposes;

(c) the nuclear safeguards purposes;

(d) the radioactive material transport purposes.

(1B) Subsection (1A) does not preclude health and safety regulations from including provision merely because the provision could be

made for any of the purposes mentioned in paragraphs (a) to (d) of that subsection."

(3) In subsection (2), for "the preceding subsection" substitute "subsection (1)".

(4) In subsection (3)(c), after "may" insert ", subject to subsection (3A),".

(5) After subsection (3) insert—

"(3A) Nothing in this section is to be taken to permit health and safety regulations to make provision about responsibility for the enforcement of any of the relevant statutory provisions as they apply in relation to any licensed nuclear site (within the meaning given in section 49 of the Energy Act 2012 (nuclear safety purposes))."

9 (1) Section 18 (authorities responsible for enforcement of the relevant statutory provisions) is amended as follows.

(2) After subsection (1) insert—

"(1A) The Office for Nuclear Regulation is responsible for the enforcement of the relevant statutory provisions as they apply in relation to licensed nuclear sites (within the meaning given in section 49 of the Energy Act 2012 (nuclear safety purposes))."

(3) In subsection (2)—

(a) before paragraph (a) insert—

"(za) make the Office for Nuclear Regulation responsible for the enforcement of the relevant statutory provisions to such extent as may be prescribed (and may in particular provide for any site or matter in relation to which the Office for Nuclear Regulation is made so responsible to be determined by the Secretary of State or the Executive under the regulations);";

(b) in paragraph (b), before sub-paragraph (i) insert—

"(zi) transferred from the Executive or local authorities to the Office for Nuclear Regulation, or from the Office for Nuclear Regulation to the Executive or local authorities;";

(c) in paragraph (b)(ii)—

(i) after "Executive" insert ", ONR";

(ii) after "by virtue of" insert "subsection (1A) or".

(4) After subsection (3) insert—

"(3A) Regulations under subsection (2)(a) may not make local authorities enforcing authorities in relation to any site in relation to which the Office for Nuclear Regulation is an enforcing authority.

(3B) Where the Office for Nuclear Regulation is, by or under subsection (1A) or (2), made responsible for the enforcement of any of the relevant statutory provisions to any extent, it must make adequate arrangements for the enforcement of those provisions to that extent."

(5) In subsection (5) in the opening words, after "the Executive" insert ", the Office for Nuclear Regulation".

(6) In subsection (7), in the words following paragraph (b)—

(a) after "section 13" insert "of this Act or section 76 of the Energy Act 2012 (power for Office for Nuclear Regulation to arrange for exercise of functions by others)";

(b) after "the Executive" (in the first and third places) insert "or the Office for Nuclear Regulation";

(c) after "the Executive" (in the second place) insert "or the Office for Nuclear Regulation (as the case may be)";

(d) for "under that subsection" substitute "or arrangements under the provision in question".

10 In section 16 (approval of codes of practice by the Executive), in subsection (1A)(a), after "7" insert "except so far as section 7 relates to the relevant nuclear provisions".

11 (1) Section 50 (regulations under the relevant statutory provisions) is amended as follows.

(2) In subsection (1AA), for the words following "unless" substitute "the Secretary of State has consulted—

(a) the Executive,

(b) the Office for Nuclear Regulation, and

(c) such other bodies as appear to the Secretary of State to be appropriate."

(3) After that subsection insert—

"(1AB) Subsection (1) does not apply to the exercise of the power in section 43 so far as it is exercised to make provision in relation to fees payable for or in connection with the performance of a function by or on behalf of—

(a) the Office for Nuclear Regulation, or

(b) any inspector appointed by the Office for Nuclear Regulation."

(4) In subsection (2), for "the Executive" substitute "—

(a) the Executive, and

(b) the Office for Nuclear Regulation."

(5) In subsection (3), before paragraph (a) insert—

"(za) the Office for Nuclear Regulation;".

(6) After subsection (3) insert—

"(4) If the Executive has consulted the Office for Nuclear Regulation under subsection (3) in relation to a proposal for regulations under the any of the relevant statutory provisions, it must, when it submits the proposal (with or without modification) to the Secretary of State, also submit—

(a) any representations made by the Office for Nuclear Regulation in response to the consultation, and

(b) any response to those representations given by the Executive to the Office for Nuclear Regulation."

12 In section 53(1) (general interpretation of Part 1)—

(a) after the definition of "micro-organism" insert—

""nuclear safeguards purposes" has the same meaning as in Part 2 of the Energy Act 2012 (nuclear regulation etc.) (see section 53 of that Act);

"nuclear safety purposes" has the same meaning as in that Part of that Act (see section 49 of that Act);

"nuclear security purposes" has the same meaning as in that Part that Act (see section 51 of that Act);";

(b) after the definition of "offshore installation" insert—

""the ONR's purposes" has the same meaning as in Part 2 of the Energy Act 2012 (see section 48 of that Act);";

(c) after the definition of "prohibition notice" insert—

""the radioactive material transport purposes" means the transport purposes within the meaning of Part 2 of the Energy Act 2012 (see section 54 of that Act);";

(d) after the definition of "railway safety purposes" insert—

""the relevant nuclear provisions" means the provisions which are the relevant statutory provisions for the purposes of Part 2 of the Energy Act 2012 (see section 62 of that Act);".

13 In Schedule 1 (existing enactments which are relevant statutory provisions), omit the entry relating to the Nuclear Installations Act 1965.

14 (1) Schedule 2 (constitution etc. of the Health and Safety Executive) is amended as follows.

(2) In paragraph 1(b) for "eleven" substitute "twelve".

(3) In paragraph 2(2) after "appoint" insert ", subject to sub-paragraph (3A),".

(4) After paragraph 2(3) insert—

"(3A) The Office for Nuclear Regulation may appoint a member from among the non-executive members of the Office for Nuclear Regulation ("an ONR member").

(3B) The Office for Nuclear Regulation must notify the Executive and the Secretary of State whenever it appoints an ONR member.".

(5) In paragraph 3, after "4" insert ", 4A".

(6) In paragraph 4, after "Executive" insert ", other than an ONR member,".

(7) After paragraph 4 insert—

"4A (1) An ONR member may at any time resign from office by giving notice in writing to the Office for Nuclear Regulation.

(2) An ONR member ceases to be a member of the Executive upon ceasing to be a member of the Office for Nuclear Regulation.

(3) The Office for Nuclear Regulation may remove an ONR member from office by giving notice in writing.

(4) The Office for Nuclear Regulation must notify the Executive and the Secretary of State whenever an ONR member—

(a) resigns from office,

(b) ceases to be a member of the Office for Nuclear Regulation, or

(c) is removed from office.".

(8) In paragraph 5, after "member" insert ", other than an ONR member,".

PART 2

NUCLEAR SAFETY

Nuclear Installations Act 1965 (c. 57)

15 The Nuclear Installations Act 1965 is amended as follows.

16 (1) Section 1 (restriction of certain nuclear installations to licensed sites) is amended as follows.

(2) In subsection (1), for "Minister" substitute "appropriate national authority".

(3) In subsection (3), at the end insert "and liable—

(a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or a fine, or both;

(b) on summary conviction to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland), or a fine not exceeding £20,000, or both.

(5A) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's power to imprison), the reference to 12 months in subsection (3)(b), as it has effect in England and Wales, is to be read as a reference to 6 months."

17 (1) Section 3 (grant and variation of nuclear site licences) is amended as follows.

(2) In subsection (1A)—

(a) for "Health and Safety Executive" substitute "appropriate national authority";

(b) omit "in respect of a site in Great Britain".

(3) In subsection (2), for "Minister" substitute "appropriate national authority".

(4) In subsection (3)—

(a) for "Minister", in each place where it appears, substitute "appropriate national authority";

(b) for "he", in each place where it appears, substitute "it".

(5) In subsection (6) for "Minister", in both places where it appears, substitute "appropriate national authority".

(6) In subsection (6A)—

(a) for "Health and Safety Executive" substitute "appropriate national authority";

(b) omit "in respect of a site in Great Britain".

18 (1) Section 4 (attachment of conditions to licences) is amended as follows.

(2) In subsections (1) to (3) for "Minister", in each place where it appears, substitute "appropriate national authority".

(3) In subsection (3A)—

(a) for "Health and Safety Executive" substitute "appropriate national authority";

(b) in paragraph (a) omit "in respect of a site in Great Britain".

(4) In subsection (4)—

(a) for "Minister" substitute "appropriate national authority";

(b) for "him", in both places where it appears, substitute "it";

(c) for "his" substitute "its".

(5) For subsection (6) substitute—

"(6) A person who contravenes subsection (5) of this section is guilty of an offence and liable—

(a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or a fine, or both;

(b) on summary conviction to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland), or a fine not exceeding £20,000, or both.

(7) A person who, without reasonable cause, pulls down, injures or defaces any document posted in pursuance of subsection (5) is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(8) Where a condition is attached to a nuclear site licence by virtue of this section is contravened, each person within subsection (9) is guilty of an offence and liable—

(a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or a fine, or both;

(b) on summary conviction to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland), or a fine not exceeding £20,000, or both.

(9) Those persons are—

(a) the licensee, and

(b) any person having duties upon the site in question who committed the contravention.

(10) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's power to imprison), the references to 12 months in subsections (6)(b) and (8)(b), as they have effect in England and Wales, are to be read as references to 6 months."

19 (1) Section 5 (revocation and surrender of licences) is amended as follows.

(2) In subsection (1) for "Minister" substitute "appropriate national authority".

(3) In subsection (1A)—

(a) for "Health and Safety Executive" substitute "appropriate national authority";

(b) omit "in respect of a site in Great Britain".

(4) In subsections (2) and (3) for "Minister", in each place where it appears, substitute "appropriate national authority".

(5) In subsection (4)—

(a) the words following "offence" in the first place it appears become subsection (4B);

(b) at the end of subsection (4) (as so amended) insert "and liable—

(a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or a fine, or both;

(b) on summary conviction to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland), or a fine not exceeding £20,000, or both.";

(c) after that subsection (as so amended) insert—

"(4A) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's power to imprison), the reference to 12 months in subsection (4)(b), as it has effect in England and Wales, is to be read as a reference to 6 months.";

(d) for "and any" at the beginning of subsection (4B) substitute "Any".

20 (1) Section 22 (reporting of and inquiries into dangerous occurrences) is amended as follows.

(2) In subsection (2)—

(a) for "Minister" substitute "appropriate national authority";

(b) at the end insert "and liable—

(a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or a fine, or both;

(b) on summary conviction to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland), or a fine not exceeding £20,000, or both."

(3) After that subsection insert—

"(2A) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's power to imprison), the reference to 12 months in subsection (2)(b), as it has effect in England and Wales, is to be read as a reference to 6 months."

21 In section 24 (inspectors), for "provisions which are mentioned in Schedule 1 to the Health and Safety at Work etc. Act 1974" substitute "sections 1, 3 to 6, 22 and 24A of this Act".

22 (1) Section 24A (recovery of expenses by Health and Safety Executive) is amended as follows.

(2) In subsection (1)—

(a) for "Health and Safety Executive ("the Executive") which the Executive may" substitute "ONR which the ONR may";

(b) in paragraph (a) for "such of the provisions of this Act as are mentioned in Schedule 1 to the Health and Safety at Work etc Act 1974" substitute "sections 1, 3 to 6 and 22, and this section of this Act".

(3) In subsection (2)—
(a) for "Executive" substitute "ONR";
(b) for "the Health and Safety at Work etc. Act 1974" substitute "Schedule 6 to the Energy Act 2012".

(4) In subsections (3), (4) and (6) to (8) for "Executive", in each place where it appears, substitute "ONR".

(5) In the heading, for "Health and Safety Executive" substitute "ONR".

23 (1) Section 26 (interpretation) is amended as follows.

(2) After the definition of "the appropriate Agency" insert—
""the appropriate national authority" means—
(a) in relation to England and Wales and Scotland, the ONR;
(b) in relation to Northern Ireland, the Secretary of State;".

(3) For the definition of "inspector" substitute—
""inspector" in sections 4(5) and 5(2) of this Act means—
(a) in relation to England and Wales and Scotland, an inspector appointed by the ONR under Schedule 6 to the Energy Act 2012 (inspectors);
(b) in relation to Northern Ireland, an inspector appointed under section 24 of this Act;".

(4) After the definition of "occurrence" insert—
"ONR" means the Office for Nuclear Regulation;".

24 In section 27(1)(b) (Northern Ireland) omit sub-paragraphs (ii) and (iii).

PART 3

NUCLEAR SECURITY

Anti-terrorism, Crime and Security Act 2001 (c. 24)

25 The Anti-terrorism, Crime and Security Act 2001 is amended as follows.

26 (1) Section 77 (regulation of security of civil nuclear industry) is amended as follows.

(2) In subsection (3)(a)(ii), for the words following "term" substitute "not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland), or a fine not exceeding £20,000, or both".

(3) After that subsection insert—

"(3A) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's power to imprison), the reference to 12 months

in subsection (3)(a)(ii), as it has effect in England and Wales, is to be read as a reference to 6 months."

(4) In subsection (5)(a), for "the Health and Safety Executive" substitute "the Office for Nuclear Regulation".

27 In section 80 (prohibition of disclosures of uranium enrichment technology), in subsection (4)(b), after "the Secretary of State" insert "or the Office for Nuclear Regulation".

PART 4

NUCLEAR SAFEGUARDS

Atomic Energy Act 1946

28 The Atomic Energy Act 1946 is amended as follows.

29 (1) Section 4 (power to obtain information of materials, plants and processes) is amended as follows.

(2) In subsection (1), at the beginning insert "Subject to subsection (1A)".

(3) After subsection (1) insert—

"(1A) No notice may be served under subsection (1) which imposes a requirement which could be imposed—

(a) by a notice served by the Office for Nuclear Regulation under section 78 of the Energy Act 2012 (power of ONR to obtain information), or

(b) by an authorised inspector under paragraph 15 of Schedule 6 to that Act (power of inspectors to require information and documents).".

30 (1) Section 5 (power of entry and inspection) is amended as follows.

(2) In subsection (1), at the beginning insert "Subject to subsection (1A)".

(3) After subsection (1) insert—

"(1A) No authorisation to enter or inspect any premises may be given by the Minister to any person under subsection (1) if such authorisation could be given by the Office for Nuclear Regulation to an inspector under Part 1 of Schedule 6 to the Energy Act 2012 (appointment and powers of inspectors).".

31 In section 11 (restriction on disclosure of information relating to plant), after subsection (2) insert—

"(2A) The communication of information is not an offence under this section if it is—

(a) communication to the Office for Nuclear Regulation of information required under section 78 of the Energy Act 2012 (power of ONR to obtain information), or any subsequent communication of that information by the Office for Nuclear Regulation,

(b) communication to an inspector of information required by the inspector pursuant to a direction under section 74(5) of

that Act (information required for compliance with safeguards obligations), or any subsequent communication of that information by an inspector, or

(c) communication to an authorised inspector of information required by the inspector under paragraph 15 of Schedule 6 to that Act (power of inspectors to require information and documents), or any subsequent communication of that information by an inspector.".

Nuclear Safeguards and Electricity (Finance) Act 1978

32 The Nuclear Safeguards and Electricity (Finance) Act 1978 is amended as follows.

33 In section 2 (rights of International Atomic Energy Agency inspectors), in subsection (8) for "Secretary of State" substitute "Office for Nuclear Regulation".

34 In section 3 (regulations for giving effect to certain provisions of Safeguards Agreement) —

(a) after subsection (1) insert—

"(1A) Regulations under this section may in particular modify functions of, or confer functions on, the Office for Nuclear Regulation.";

(b) after subsection (2) insert—

"(2A) Before making regulations under this section the Secretary of State must consult the Office for Nuclear Regulation.".

Nuclear Safeguards Act 2000

35 The Nuclear Safeguards Act 2000 is amended as follows.

36 (1) Section 1(1) (interpretation) is amended as follows.

(2) In the definition of "Additional Protocol information" after "Secretary of State" insert "or the Office for Nuclear Regulation".

(3) In the definition of "authorised officer" for "Secretary of State" substitute "Office for Nuclear Regulation".

37 (1) Section 2 (information and records for purposes of the Additional Protocol) is amended as follows.

(2) In subsection (1), for "Secretary of State" substitute "Office for Nuclear Regulation".

(3) In subsection (2), for "Secretary of State", in both places where it appears, substitute "Office for Nuclear Regulation".

(4) In subsection (3)(a) for "Secretary of State" substitute "Office for Nuclear Regulation".

38 (1) Section 3 (identifying persons who have information) is amended as follows.

(2) In subsection (1), for "him" substitute "the Office for Nuclear Regulation".

(3) In subsection (2)(b), for "Secretary of State" substitute "Office for Nuclear Regulation".

(4) In subsection (3)(a), for "Secretary of State" substitute "Office for Nuclear Regulation".

(5) After subsection (3) insert—

"(3A) Before making regulations under this section the Secretary of State must consult the Office for Nuclear Regulation.".

(6) In subsection (5), for "Secretary of State" substitute "Office for Nuclear Regulation".

39 (1) Section 4 (powers of entry in relation to Additional Protocol information) is amended as follows.

(2) In subsection (1), in paragraphs (a) and (b), for "Secretary of State" substitute "Office for Nuclear Regulation".

(3) In subsection (2)—

(a) in the opening words, for "Secretary of State" substitute "Office for Nuclear Regulation";

(b) in paragraph (a), for "Secretary of State" substitute "Office for Nuclear Regulation";

(c) in paragraph (c)—

(i) for "Secretary of State" substitute "Office for Nuclear Regulation";

(ii) for "him" substitute "the Office for Nuclear Regulation".

40 (1) Section 5 (rights of access etc. for Agency inspectors) is amended as follows.

(2) After subsection (3) insert—

"(3A) Before making an order under subsection (3) the Secretary of State must consult the Office for Nuclear Regulation.".

(3) In subsection (6) for "Secretary of State" substitute "Office for Nuclear Regulation".

41 In section 6 (restriction on disclosure), after subsection (3) insert—

"(3A) It is not an offence under this section to disclose information to which this section applies which is held by the Office for Nuclear Regulation if the disclosure is not in contravention of Part 2 of the Energy Act 2012.".

42 In section 7 (giving false or misleading information), in paragraphs (a) and (b) for "Secretary of State" substitute "Office for Nuclear Regulation".

SCHEDULE 10

Section 103

TRANSFER SCHEMES UNDER SECTION 103

Transfer schemes

1 The things that may be transferred under a transfer scheme include—

(a) property, rights and liabilities that could not otherwise be transferred;

(b) property acquired, and rights and liabilities arising, after the making of the scheme.

2 A transfer scheme may make consequential, supplementary, incidental or transitional provision and may in particular—

(a) create rights, or impose liabilities, in relation to property or rights transferred;

(b) make provision about the continuing effect of things done by the Oil and Pipelines Agency in respect of anything transferred;

(c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the Oil and Pipelines Agency in respect of anything transferred;

(d) make provision for references to the Oil and Pipelines Agency in an instrument or other document in respect of anything transferred to be treated as references to the Secretary of State;

(e) make provision for the shared ownership or use of property;

(f) if the TUPE regulations do not apply in relation to the transfer, make provision which is the same or similar.

3 A transfer scheme may provide—

(a) for modification by agreement;

(b) for modifications to have effect from the date when the original scheme came into effect.

4 For the purposes of this Schedule—

(a) an individual who holds employment in the civil service is to be treated as employed by virtue of a contract of employment, and

(b) the terms of the individual's employment in the civil service are to be regarded as constituting the terms of the contract of employment.

5 In paragraphs 1 to 4—

"civil service" means the civil service of the state;

"TUPE regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246);

references to rights and liabilities include rights and liabilities relating to a contract of employment;

references to the transfer of property include the grant of a lease.

Section 5: Explanatory Notes

ENERGY BILL

Explanatory Notes

INTRODUCTION

1. These Explanatory Notes relate to the Energy Bill as published in draft on 22 May 2012. They have been prepared by the Department of Energy and Climate Change 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.

2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. This Bill will establish a legislative framework for delivering secure, affordable and low carbon energy.

4. At its core is the need to ensure that, as older power plants are taken offline and electricity demand continues to increase, the UK remains able to generate enough energy to meet its needs. This requires significant investment in new infrastructure to be brought forward – over £100 billion – and new schemes to be integrated to ensure this investment will contribute to the drive to meet renewables and decarbonisation targets.

5. Electricity Market Reform – the cornerstone of this Bill – was first set out in a White Paper in July 2011.[1] Its provisions have now expanded to cover all of the following:

[1] http://www.decc.gov.uk/en/content/cms/legislation/white_papers/emr_wp_2011/emr_wp_2011.aspx

- **Contracts for Difference** – long-term instruments to provide stable and predictable incentives for companies to invest in low-carbon generation;
- **Investment Instruments** – long-term instruments to enable early investment in advance of the CfD regime coming into force;
- **Capacity Market** – to ensure the security of electricity supply;
- **Conflicts of Interest** and **Contingency Arrangements** – to ensure the institution which will deliver these schemes is fit for purpose;
- **Renewables Transitional** – transition arrangements for investments under the renewables obligation scheme;
- **Emissions Performance Standard** – to limit carbon dioxide emissions from new fossil fuel power stations, and
- **Strategy and Policy Statement** – to create regulatory certainty by seeking to ensure that Government and the regulator are aligned at a strategic level, as recommended in the Ofgem Review of July 2011.[2]

6. Part 2 of this Bill establishes, on a statutory basis, the Office for Nuclear Regulation, creating the statutory framework to meet the future challenges of regulating the nuclear industry that will see the first new power plants since the 1980s being built.

7. The provisions included in Part 3 of this Bill allow for the possible sale, at a future date, of the Government Pipe-Line and Storage System. This is a network which carries aviation fuel to military and civilian locations.

8. The final part of this Bill covers a minor miscellaneous measure relating to Offshore Transmission.

OVERVIEW AND STRUCTURE OF THE BILL

9. The Bill is in four parts:

Part 1: Electricity Market Reform. Reforming the electricity market with the aim of ensuring that UK electricity demands continue to be met over the coming decades. This Part includes provisions on Contracts for Difference and Investment Instruments, a Capacity Market, institutional arrangements in relation to the delivery of these schemes, a transition to a certificate purchase scheme for generation supported by the Renewables Obligation, an Emissions Performance Standard for new fossil-fuel plants, and a Strategy and Policy Statement for Ofgem and the Secretary of State.

[2] http://www.decc.gov.uk/assets/decc/11/meeting-energy-demand/energy-markets/2151-ofgem-review-final-report.pdf

Part 2: Nuclear Regulation. Establishes the Office for Nuclear Regulation with powers and responsibilities to regulate the safety and security of the next generation of nuclear power plants, as well as to deal with the transport of radioactive materials nuclear security and safeguards more generally.

Part 3: Government Pipe-Line and Storage System. Measures to enable the sale of the GPSS. Including providing for the rights of the Secretary of State in relation to the GPSS, registration of those rights, compensation in respect of the creation of new rights or their exercise, and for transferral of ownership, as well as powers to dissolve the Oil and Pipelines Agency by order.

Part 4: Miscellaneous. A minor measure to provide an exception to the prohibition of participating in the transmission of electricity without a licence for a person who participates in offshore transmission during a commissioning period in certain circumstances; review; extent; commencement; and the short title.

TERRITORIAL EXTENT AND APPLICATION

10. This Bill extends to England and Wales, Scotland and Northern Ireland, as described below.

11. All provisions in this Bill extend to England.

12. All provisions in this Bill apply to Wales (although there are no GPSS assets in Wales).

13. All provisions in this Bill extend to Scotland.

14. Only the following provisions extend to Northern Ireland:

- Emissions Performance Standard (Part 1, Chapter 7), and
- Some aspects of Nuclear Regulation (Part 2).

PART 1: ELECTRICITY MARKET REFORM

CHAPTER 1: CONTRACTS FOR DIFFERENCE

Summary and Background

15. The Feed-in Tariff with Contract for Difference (FiT CfD) aims to tackle the lack of investment in low carbon generation allowing us to achieve the Government's objectives under the Electricity Market Reform to:
    - ensure the future security of electricity supplies;
    - drive the decarbonisation of our electricity generation, and
    - minimise costs to the consumer.

16. The FiT CfD provides developers of eligible low carbon generation with a long term instrument (a "CfD") that provides for a stable revenue stream enabling investment in low carbon. The scheme will be operated by the operator of the national electricity transmission system (currently National Grid Electricity Transmission PLC) who will allocate CfDs in line with agreed objectives set by Government. In the longer term allocation will be determined by a competitive process. In exceptional cases the Secretary of State will allocate CFDs to individual projects where the generic terms are not suited and will have to be individually negotiated.

17. In most cases the mechanism will work by setting an agreed strike price which will be at the level determined to be necessary to support the particular technologies supported by the scheme. Generators will sell their generation into the market (as normal) and will generally be paid (in addition to the revenue raised by the sale of its electricity) the difference between the strike price and a reference price. A reference price is a price which attempts to reflect the wholesale electricity price. Payments will be made by all licensed suppliers, who will be party to each instrument issued, where the reference price is below an agreed strike price or where a fixed payment is due to be made under a one way CFD.

18. When the reference price is above an agreed strike price, payments will be made by the generator to the licensed suppliers. This clawback is aimed at ensuring that consumers are protected from paying generators where the wholesale electricity price would be sufficient to support the generator. There will be variations on this "two-way" CFD model in order to support different types of generation whilst still retaining sensible incentives to generate.

Commentary on Clauses

Clause 1: Power to make regulations about contracts for difference

19. This sets out the Secretary of State's power to make regulations to give effect to the Contracts for Difference (hereafter CFD) policy aimed at decarbonising UK electricity generation.

20. A CFD is an instrument issued to a low carbon generator. The instrument imposes obligations on all electricity suppliers and the electricity generator to whom it is issued.

21. The regulations will set out the obligations (or 'terms') that can be included in CFDs. These terms will include provision ensuring that the generator receives a stabilised revenue for low carbon electricity produced for the duration of the CFD. The provision allows the level of support to be set at a specific level (the strike price) for different technologies, and payments to or from generators to be calculated based on the difference between this and a deemed level of market support (the reference price).

Clause 2: Issuing a CFD

22. This sets out the power allowing the Secretary of State and the national system operator (defined as person operating the national transmission system for Great Britain) to issue CFDs in accordance with provisions set out in the regulations. Most projects will receive CFDs issued by the national system operator and in strict accordance with the terms set out in the CFD regulations. Where flexibility is needed to vary the terms for particular projects, the Secretary of State will issue CFDs.

Clause 3: Meaning of "electricity generator"

23. This provides for CFD regulations to define the meaning of "generators" and sets out some characteristics which may in particular be defined. This will enable the Secretary of State to determine eligibility of generation projects for the scheme.

Clause 4: Terms of a CFD

24. This sets out a non-exhaustive list of the terms, such as duration and payment calculations, which may be included in a CFD. These terms will be set out in the CFD regulations.

Clause 5: Strike Price

25. This sets out the power for a strike price to be set. For most projects supported by a CFD, the strike price equates to the total revenue (per amount of electricity generated) specific technologies are intended to receive.

26. The provision allows for the different processes which may be used to set the strike price:
    - Administrative setting – e.g. consultative process leading to a stated price for each technology or a negotiated process with specific generation assets, and/or
    - Competitive setting – e.g. an auction or tender process.

27. Strike prices may be set by the Secretary of State or by a person designated by him, such as the national system operator.

Clause 6: Market reference price

28. This sets out the power for the Secretary of State – or a designated person – to set the market reference price to be specified in any CFD. The market reference price is deemed as the level of income received by generators for selling their electricity in the market. This price is compared with the strike price to calculate any difference payments due to, or owed by, generators.

Clause 7: Functions of the Authority: CFD regulations

29. This enables the CFD regulations to grant functions to the Gas and Electricity Markets Authority (GEMA – the regulator for the electricity markets in Great Britain) for the purpose of monitoring participants in the CFD as well as determining matters set out in CFDs. This could be, for example, to ensure compliance with obligations such as biomass sustainability and determining whether such obligations have been met.

Clause 8: Order for maximum cost and targets relating to CFDs

30. This enables the Secretary of State to make an order setting out a limit on the cost of the scheme, alongside specific targets for the national system operator in issuing CFDs.

31. It also includes powers for the Secretary of State to instruct the national system operator that the maximum cost has been reached or to prevent them issuing a CFD which Secretary of State believes would breach the maximum cost.

32. It also allows the Secretary of State to set specific targets relating to the amount of CFDs issued in respect of:

- type of generation technologies;
- size of generation capacity, and
- location of generation.

Clause 9: Consultation

33. This sets out that the Secretary of State must consult licensed suppliers and the national system operator before making changes to secondary legislation. Scottish and Welsh Ministers will also be consulted.

Clause 10: Licence modifications for the purpose of CFDs

34. This sets out the Secretary of State's power to modify transmission licenses, the standard conditions of such licences and documents maintained in accordance with conditions of such licences (such as industry codes).

35. The powers will be used to confer functions upon the national system operator to enable it to administer the CFD scheme. It will also be used to make provision about settlement of payment obligations under CFDs. Before making any changes the Secretary of State will need to consult licensed suppliers, the national system operator, the Authority, and Welsh and Scottish Ministers.

Clause 11: Section 10: Parliamentary procedure

36. This sets out the procedure to be followed in making license modifications under the above clause. It requires a draft to be placed before Parliament for consideration over a 40 day period. So long as there is no resolution not to adopt the draft in the 40 day period the license modification comes into effect.

Clause 12: General Considerations

37. This sets out the overall objectives to which the Secretary of State must have regard to when setting up the CFD scheme and later modifying it. The clause requires the Secretary of State to take account of the need to meet climate change and renewables targets, alongside the impact the policy will have on security of supply and the cost to consumers.

Clause 13: Regulations and orders under Chapter 1

38. This sets out the process to be followed for implementing the order making and regulation making powers in clauses 1 and 8 and the level of Parliamentary scrutiny that applies.

CHAPTER 2: INVESTMENT INSTRUMENTS

Summary and Background

39. The provisions in this Chapter are aimed at addressing the hiatus in investment in low carbon electricity generation which is likely to occur until the CfD regime is implemented under the regulation-making powers provided for in Chapter 1 of Part 1 of the Bill. Therefore, the provisions here are transitional.

40. It is intended that provisions will address this hiatus because either they will enable the Secretary of State to issue "investment instruments" after the enactment of the Bill (which will be binding and take an analogous form to CfDs under Part 1 of the Bill) or because they will impose a duty on the

Secretary of State to issue any investment instruments that have been laid in draft before Parliament during the passage of the Bill. Either approach should provide certainty for developers on the revenue stream that will be forthcoming.

41. In most cases, an investment instrument will operate by reference to a strike price, which will be set at the level determined to be necessary to support the particular low carbon electricity generation plant supported by the instrument. Generators will sell their generation into the market (as normal) and will generally be paid (in addition to the revenue raised by the sale of their electricity onto the wholesale market) the difference between the strike price and a reference price. A reference price is a price which attempts to reflect the wholesale electricity price. Payments will be made by all licensed suppliers, who will be party to each instrument issued, where the reference price is below an agreed strike price. When the reference price is above the strike price, payments will be made by the generator to the licensed suppliers. This clawback is aimed at ensuring that consumers are protected from paying generators where the wholesale electricity price would be sufficient to support the generator. There may be variations on this "two-way" CFD model in order to support different types of generation whilst still retaining sensible incentives to generate.

Commentary on Clauses

Clause 14: Investment instruments

42. Clause 15 of the Bill imposes a duty on the Secretary of State to issue investment instruments under certain circumstances, and clause 16 provides the Secretary of State with a time limited power to issue such instruments. Clause 14 provides detail about the effect of these instruments, what they may contain and who will be the parties to them.

43. Subsection (1) provides that the effect of an investment instrument issued by the Secretary of State is to impose obligations on all electricity suppliers and on the electricity generator to whom it is issued. Therefore, an investment instrument cannot impose obligations on any other persons. However it is be noted that subsection (7) defines electricity suppliers to cover not only those persons who hold a licence under section 6(1)(d) of the Electricity Act 1989 at the time the investment instrument is issued but also any other person who becomes a supply license holder after that time. Therefore, a person will become a party to and be bound by a pre-existing investment instrument when they become a licensed supplier.

44. Subsection (2) of the clause provides the definition of "electricity generator" to cover not simply someone who is directly involved in the generation of electricity. For example, it will be possible to issue an investment instrument to someone intending to establish, operate or participate in the operation of a new or altered electricity generation station or who has a freehold or leasehold in such facilities.

45. Subsections (3) provides that the Secretary of State may include within an investment instrument an obligation for the parties to make payments to each other based on the difference between a strike price (a price of electricity per MWh) and a market reference price. Subsection (4) makes it clear, however, that investment instruments may include provisions for payments to be made on a different basis. Therefore, there is flexibility for the Secretary of State to determine the most appropriate underlying payment mechanism in the individual case. In particular, in most cases (as stated above) it is intended that investments instruments should operate on a two-way basis – i.e. when the reference price is above the strike price in the investment instrument, payments will be made by the generator to the licensed suppliers and where the reference price is below the strike price, payments will be made by licensed suppliers to the generator. However, in individual cases, variations from this "two-way" CFD model may be appropriate.

46. Finally, subsection (6) sets out a non-exhaustive list of the terms which the Secretary of State may include in an investment instrument. For example, the duration of an instrument, how the market reference price is to be determined and dispute resolution, such as involving an arbitrator are covered (see paragraphs (a), (k) and (i)).

Clause 15: Secretary of State duty to issue an investment instrument

47. Subsection (1) would impose a duty on the Secretary of State to issue an investment instrument if a number of conditions have been met in relation to the instrument.

48. These conditions are as follows:
    a. that the Secretary of State has laid a draft of the instrument before Parliament during the passage of the Bill – i.e. between its introduction and enactment (subsection (2));
    b. that the draft was accompanied with a statement to the effect that the Secretary of State is (i) laying the draft instrument in anticipation of commencement of this clause and that he (ii) considers that issuing the instrument would encourage low carbon electricity generation (as defined in subsection (8)), (iii) considers that unless the draft is laid there is a significant risk that the low carbon electricity generation to

which the instrument relates will not occur or be significantly delayed and (iv) considers that issuing the instrument would be appropriate having regard to: the need to ensure security of supply in Great Britain; likely costs to consumers and two duties under the Climate Change Act 2008 relating to the 2050 carbon target, and carbon budgeting (subsection (2)); and

c. that before the draft was laid the electricity generator to whom the instrument would be issued has consented to the laying of the draft and that licensed electricity suppliers have been consulted on it by the Secretary of State (subsection (3)).

49. It should also be added that the duty does not apply (see subsection (6) if the Secretary of State is of the opinion that issuing the instrument would give rise to unlawful State aid.

50. In relation to the consultation which is required with licensed suppliers under subsection (3)(b), subsection (5) provides that the Secretary of State must not disclose, as part of this, any information which he considers consists of trade secrets or is sensitive commercial information without the consent of the person to whom it relates.

51. Subsections (4) and (7) provide that the Secretary of State must publish a draft instrument and any instrument which has issued pursuant to the duty here, as soon as reasonably practical after laying the draft before Parliament or issuing it (as the case may be).

52. "Low carbon electricity" generation is defined in subsection (8) as electricity generation which in the opinion of the Secretary of State will contribute to a reduction of targeted greenhouse gases. Such gases include carbon dioxide, methane and hydrofluorocarbons (see section 24 of the Climate Change Act 2008).

Clause 16: Secretary of State power to issue an investment instrument

53. This clause would provide the Secretary of State with a time-limited power to issue investment instruments. The power will either cease on 31st December 2015 or, if earlier, the date on which CfD regulations (i.e. regulations made under clause 1) confer a power on the Secretary of State to issue CfDs.

54. The power here to issue investment instruments is only exercisable if the conditions detailed in subsections (2) and (3) of the clause are met. Namely, that (i) the Secretary of State has laid a draft of the instrument before Parliament, (ii) the draft was accompanied by a statement to the effect that the Secretary of State considers that issuing the instrument would encourage low

carbon electricity generation and that it is appropriate to issue the instrument having regard to the need to ensure security of supply in Great Britain, likely costs to consumers and sections 1 and 4(1)(b) of the Climate Change Act 2008 (which relating to the 2050 carbon target and carbon budgeting). In addition, before the draft was laid the electricity generator to whom the instrument would be issued must have consented to the laying of the draft and the Secretary of State must have consulted each licensed electricity supplier.

55. Subsection (4) provides that the requirements here for generator consent and consultation with licensed suppliers may be satisfied before or after enactment of the Bill. Therefore, for example, consultation might lawfully take place into an investment instrument before the Bill comes into force, so that it can be issued relatively soon after.

56. Furthermore, in relation to the consultation which is required with licensed suppliers, subsection (5) provides that the Secretary of State must not disclose any information which he considers consists of trade secrets or is sensitive commercial information without the consent of the person to whom the information relates. For example, in negotiating the strike price on an investment instrument with the Secretary of State, a generator may disclose commercially sensitive information about the expected profitability of a plant. Revealing this to in the consultation to competitors is likely to be damaging to the generator's financial interests.

57. Subsection (6) provides that the Secretary of State must publish any investment instrument which is issued using this power as soon as reasonably practical after it is issued

Clause 17: Licence modifications for the purpose of investment instruments

58. This clause provides the Secretary of State with a number of powers to make modifications relating to generation, transmission and supply licenses issued under section 6 of the Electricity Act 1989. For example, the conditions of specific licences may be modified as well as the standard conditions of licences issued to suppliers, or for example, the Balancing and Settlement Code since that is a document maintained in accordance with the conditions of supply and generation licenses.

59. However, the powers here to modify licenses may only be used to confer functions upon the national system operator in connection with investment instruments (for example to enable it to take on a role to administer them) or to make provision about settlement of payment obligations under investment instruments. In addition, any modifications must be published and before making any the Secretary of State must consult, amongst others, any person

whose licence is to be modified and the Gas and Electricity Markets Authority.

Clause 18: Section 17: Parliamentary procedure

60. This sets out the Parliamentary procedure to be followed before making license modifications under Clause 17. The clause requires a draft of any modifications to be laid before Parliament for consideration over a 40 day period. So long as there is no resolution not to adopt the draft modification in the 40 day period, the license modifications may be made.

Clause 19: Regulations for the purpose of investment instruments

61. This clause confers powers on the Secretary of State by regulations to make further provision about or in connection with investment instruments issued either under clause 15 or 16. For example, under the power it would be possible to confer functions on the Gas and Electricity Markets Authority to monitor and collate information relating to the implementation of investment instruments. Or it would be possible to provide for a body (other than NGET) to administer the settlement of payments under investment instruments.

62. The regulations are subject to the negative resolution procedure involving both Houses of Parliament and before they are made the Secretary of State must first consult, for example, any person on whom functions would be conferred by the regulations, licensed suppliers and any generator who is a party to an investment instrument.

CHAPTER 3: CAPACITY MARKET

Summary and Background

63. The Capacity Market is being introduced to mitigate future risks to the security of electricity supplies.

64. Around a fifth of existing capacity is expected to close over the next decade and more intermittent (wind) and inflexible (nuclear) generation is being built to replace it. These changes to our market create an investment challenge, in particular for plant which will be needed during periods of peak demand or still days but which would operate less often than now and therefore have less certain revenues. This uncertainty could lead to underinvestment and, as a consequence, uncomfortably low levels of reliable capacity.

65. This legislation therefore provides for the introduction of a Capacity Market to provide an insurance policy against the possibility of future blackouts – for

example during cold, windless periods – with the aim of helping to ensure that consumers continue to receive reliable electricity supplies at an affordable cost.

66. Under the Capacity Market, a forecast is made of future peak electricity demand. This is then used to determine the level of reliable capacity that is needed to ensure security of supply. Providers of capacity (either electricity generation or other non-generation technologies such as demand side response) then bid in to an central auction where they guarantee to have capacity available in a given year in the future (likely to be around four years after the auction), should it be needed. Those who are successful in the auction receive a guaranteed revenue stream for providing capacity. This is in addition to any revenues that they receive through the electricity market. If the providers of capacity are unable to provide the capacity when it is needed they will face penalties (referred to as capacity incentives). The Capacity Market will therefore ensure sufficient reliable capacity is available by providing revenue for investment in new capacity or for existing capacity to remain open.

Commentary on Clauses

Clause 20: Power to make electricity capacity regulations

67. This clause enables the Secretary of State to make regulations ("electricity capacity regulations") about the provision of capacity to meet the demands of consumers for the supply of electricity in Great Britain. Subsection (3) clarifies that "providing capacity" means providing electricity or reducing demand for electricity.

Clause 21: Capacity agreements

68. This clarifies that electricity capacity regulations can make provision about capacity agreements.

69. Subsection (2) states that a capacity agreement is an instrument that can give rise to obligations for the holder of the agreement ("a capacity provider") and for electricity suppliers. It can require a capacity provider to provide capacity (i.e. provide electricity or reduce demand for electricity) and to make payments to electricity suppliers ("capacity incentives"). In addition, all electricity suppliers may be required to make payments to capacity providers ("capacity payments").

70. Subsection (2) allows capacity payments and capacity incentives to be paid directly to capacity providers and suppliers, or to be paid to an intermediary such as a settlement agent.

71. Subsection (3) enables electricity capacity regulations to make provision regarding the definition of "electricity suppliers" for the purposes of a capacity agreement. For example this may allow a threshold to be put in place to exclude smaller suppliers if the Secretary of State considered that it was not proportionate to require all electricity suppliers to pay for the costs of the Capacity Market.

72. Subsection (4) identifies the sort of provision that may be made about capacity agreements in electricity capacity regulations, including: the terms of a capacity agreement; how capacity agreements will be issued; the persons who may be a capacity provider; the circumstances in which capacity must be available; the duration of a capacity agreement; the calculation of payments associated with capacity agreements and the body that will administer those payments; the enforcement of the terms of a capacity agreement and any settlement of disputes; and the circumstances in which a capacity agreement may be changed, terminated, assigned or traded.

73. Subsection (5) clarifies that such provision can include conferring functions on the national system operator to issue capacity agreements, and provision about the outcome of a capacity auction (see clause 22). For example this would enable the Secretary of State to require the national system operator to issue a capacity agreement to a person whose bid is successful in a capacity auction. Paragraphs (c) and (d) enable electricity capacity regulations to set out the eligibility criteria for persons before they may enter a capacity auction or become a capacity provider. In particular, those persons may be required to meet certain conditions, or to satisfy the national system operator of certain matters, as provided for in electricity capacity regulations.

74. Subsection (6) clarifies that such conditions may include, in particular, a requirement for a person to consent to an inspection of plant or premises. For example this may be necessary to determine whether the person is capable of providing capacity under a capacity agreement.

Clause 22 Capacity auctions

75. This clause enables the Secretary of State to make provision in electricity capacity regulations for the determination on a competitive basis (i.e. through capacity auctions run by the national system operator) of who may be a capacity provider.

76. Subsection (2) allows the Secretary of State to make provision for the national system operator to run capacity auctions, the circumstances in which a capacity auction is to run, the intervals at which auctions are to take place and

the process by which auctions are to be run. For example the Secretary of State may specify the process by which bids into the capacity auction are assessed and how it will be decided which bids are successful. Subsection (2)(c) enables the Secretary of State to make provision for the amount of capacity in relation to which a determination may be made, for example to set out how he will decide on the total amount of capacity required from a particular capacity auction. Subsection (2)(f) allows the Secretary of State to make provision in regulations about the manner in which any function that he has in relation to capacity auction must be exercised.

77. Subsection (3) provides for electricity capacity regulations to require the national system operator to prepare and publish rules or guidance about capacity auctions, and for the process to be followed in doing so. Any such functions must be exercised in accordance with any additional requirements imposed under clause 24.

78. Subsection (4) clarifies that provision made within subsection (2)(f), which relates to the manner in which the Secretary of State exercises any function in relation to capacity auctions, may include provision about the frequency of any decision, the persons who will be consulted and the matters to be taken into account. For example the Secretary of State may take a decision on the amount of capacity which is to be sought through a particular capacity auction, on an annual basis, taking into account information or advice relating to available capacity and consumer demand.

Clause 23: Functions of the Authority: electricity capacity regulations

79. This clause enables the Secretary of State to make provision in electricity capacity regulations to confer functions on the Gas and Electricity Markets Authority.

Clause 24: Other requirements

80. This clause enables the Secretary of State to make provision to impose other requirements, in addition to those particularly associated with capacity agreements, on licence holders, persons carrying out functions under the Capacity Market and any other person who is, or has ceased to be, a capacity provider.

81. Subsection (3) sets out that such requirements may, in particular, include requirements relating to the manner in which functions are to be exercised, restrictions on the use of generation plant and participation in a capacity auction, and the inspection of plant or property (to supplement the provision in clause 21(6)). For example, the Secretary of State may require a person

carrying out functions under the Capacity Market to comply with requirements regarding a particular format, such as to report on its activities, or provide advice. In relation to restrictions on the use of generation plant and participation in a capacity auction, the Secretary of State could, for example, prevent any part of a generating plant to which a capacity agreement does not apply to be used in a way that undermined the efficient operation of the Capacity Market.

82. Subsection (4) enables electricity capacity regulations to make provision regarding the enforcement of these obligations.

Clause 25: Information

83. This clause enables the Secretary of State to make provision in electricity capacity regulations for the provision and publication of information including: to require the Gas and Electricity Markets Authority and the national system operator, or any other person specified in the regulations to provide information or advice; for the Gas and Electricity Markets Authority and the national system operator to require the provision of information for a purpose specified in the regulations; to require capacity providers and electricity suppliers to share information with one another and with any person named in the regulations; for the publication of information or advice; for the classification and protection of commercial or sensitive information; and for the enforcement of these requirements to provide, publish or protect information or advice.

84. These provisions mean, for example in relation to subsection (2)(b), that the national system operator could require the provision of any information specified in the regulations regarding the operation of the Capacity Market necessary to enable it to administer it, and to report to the Secretary of State on this. In addition, the Secretary of State could for instance, by subsection (2)(d), provide for a body such as the national system operator or an expert group to publish information regarding the operation of the Capacity Market in order to support transparency and accountability of the participants and the administration. Some information, for example relating to forecasts of available capacity some years ahead, may be based upon commercially sensitive or confidential information. The Secretary of State could use the power in subsection (2)(e) to protect any such information that informs information or advice provided to him.

Clause 26: Enforcement and dispute resolution

85. This clause enables the Secretary of State to make provision in electricity capacity regulations about enforcement and the resolution of disputes

including conferring functions on the Gas and Electricity Markets Authority, any public body or any other person.

86. Subsection (2) clarifies that such provision can include powers to impose financial penalties, provision for requirements imposed by the regulations to be enforceable by the Gas and Electricity Markets Authority using the enforcement regime set out in the Electricity Act 1989, for reference to arbitration and for appeals.

Clause 27: Licence modifications for the purpose of the capacity market

87. This clause enables the Secretary of State to make licence modifications and to amend electricity industry codes.

88. Subsection (1) allows the Secretary of State to amend the conditions of generation, transmission, distribution, supply and interconnection licences for the purpose of providing capacity to meet the demands of consumers for the supply of electricity. It also allows for the Secretary of State to amend electricity industry codes, which are documents maintained in accordance with the conditions of licences, and agreements that give effect to industry codes.

89. Subsection (2) allows the Secretary of State to provide for a new document to be required to be prepared and maintained in accordance with the conditions of a licence. This would enable the Secretary of State to create to create a new industry code, for example to set out the detailed arrangements governing the settlement of payments relating to capacity agreements. This subsection also provides for the conferring of functions on the national system operator by a modification of its licence conditions.

90. Subsection (3) allows the Secretary of State to use the modification powers in this section to make modifications which are general (e.g. applicable to all licence holders) or specific (e.g. to make different treatment for small suppliers), and allows for different modifications in different cases (e.g. to allow different treatment of licence holders depending on the market share). It also allows for modifications to make incidental, supplementary, consequential or transitional changes, which may be needed to ensure that the Capacity Market operates and interacts seamlessly with the electricity market.

91. Subsection (4) enables provisions included in a licence or industry code by a modification made under this section to include any provision of a kind that can be made in electricity capacity regulations, to make different provision for different cases and confirms that provision need not relate to the activities that the licence authorises. For example modifications to a code may specify different circumstances for different types of capacity provision (such as

electricity generation in contrast to demand side response technologies) or different capacity agreements may relate to different lengths of time. This subsection also enables licence modifications to include the sort of provision which section 7 (2A), (3) or (4) the Electricity Act 1989 state can be included in licence conditions, such as to require a licence holder to comply with a direction given by the Gas and Electricity Markets Authority or the Secretary of State.

92. Subsections (5) and (6) require the Secretary of State to consult licence holders, the Gas and Electricity Markets Authority and any other person he considers appropriate before making modifications and confirms that consultation that occurs before the passing of the Act will satisfy this requirement.

93. Subsection (7) requires that the Secretary of State publish any modifications as soon as reasonably practical after they are made.

94. Subsection (8) requires that if the Secretary of State makes modifications to part of a standard condition of a licence that the Authority must maintain this modification in licences granted after that time and that it must publish the modification.

95. The standard conditions of electricity licences are governed by section 33 of the Utilities Act 2000 (in relation to generation, distribution and supply licences), section 137 (3) of the Energy Act 2004 (electricity transmission licences) and section 146 of the Energy Act 2004 (electricity interconnector licences). Section 8A of the 1989 Act provides that conditions which, by virtue of those enactments, are standard conditions for a particular type of licence are incorporated by reference in all licences of a particular type. Subsection (9) states that a modification to a part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for these purposes.

96. Subsections (10), (11) and (12) amend the enactments described above in order to ensure that standard conditions which are amended under this clause continue to be regarded as standard conditions in their amended form.

97. Subsection (13) confirms that the power to "modify" includes the power for the Secretary of State to amend, add to or repeal and that "functions" includes powers and duties.

Clause 28: Amendment of enactments

98. This clause enables the Secretary of State to: amend or repeal section 43ZA of the 1989 Act regarding the annual report by Gas and Electricity Markets Authority on security of electricity supply; amend section 172 of the Energy Act 2044 regarding the annual report on security of energy supplies; amend section 25 of, and Schedule 6A to, the Electricity Act 1989 regarding enforcement of obligations of regulated persons (i.e. to supplement clause 26)); and to make consequential amendments to any other enactment as the Secretary of State considers appropriate as a consequence of provision made under this Chapter, including to repeal or revoke such enactments.

Clause 29: Principle objective and general duties

99. This clause provides that sections 3A to 3D of the Electricity Act 1989, which set out the principal objective and general duties of the Secretary of State and the Gas and Electricity Markets Authority, apply to the functions of the Secretary of State and the Authority under or by virtue of this Chapter.

Clause 30: Regulations under Chapter 3

100. This clause sets out how the Secretary of State can use the powers to make regulations under this Chapter and the process that must be followed.

101. Subsection (1) enables the Secretary of State to make provisions in regulations for different cases or circumstances. For example, to establish that different eligibility criteria may apply to capacity provided using different technologies. It also enables the Secretary of State to make regulations including provisions of an incidental, supplementary, consequential or transitional nature.

102. Subsection (2) requires that the Secretary of State must consult the Gas and Electricity Markets Authority, electricity suppliers and other persons that he considers it appropriate to consult before making any regulations under this Chapter.

103. Subsection (3) confirms that this requirement can be satisfied by consultation before the passing of the Bill.

104. Subsection (4) provides that regulations must be made by statutory instrument.

105. Subsection (5) requires that the first set of electricity capacity regulations, and any regulations which contain provisions that amend or repeal a provision of existing primary legislation, must follow an affirmative parliamentary procedure.

106. Subsection (6) requires that any other regulations, in particular any subsequent electricity capacity regulations, must follow the negative resolution procedure.

CHAPTER 4: CONFLICTS OF INTEREST

Summary and Background

107. Clauses 31 to 33 give the Secretary of State power to amend the System Operator's transmission licence to introduce business separation or ring-fencing measures. There are valuable synergies from the System Operator taking on the EMR delivery role. However, it could also give rise to conflicts of interest with the System Operator's existing roles in the electricity market, for example as owner of the transmission network, and its other commercial interests such as businesses in CCS, interconnection and offshore wind transmission. DECC is working with Ofgem to assess any conflicts of interest and will propose mitigation measures if they are shown to be necessary. This work will report at the end of 2012.

Commentary on Clauses

Clause 31: Transmission licences: new licence for system operation

108. Clause 31 amends the Electricity Act 1989 to give the Secretary of State power by order to separate the activities of transmission and system operation into two separate licensable activities. These two activities are currently covered by the single licensable activity of transmission. The powers give the Secretary of State the option of reinforcing the legal separation between National Grid's national system operator business (including the System Operator's new EMR functions to administer the Contract for Difference, Investment Instruments and Capacity Market) and its other activities by creating a new licensable activity for system operation.

109. New Section 56FD(1) allows the Secretary of State to amend Part 1 of the Electricity Act 1989 by order to redefine the licensable activity of transmission and add a separate licensable activity of system operation. Subsection (2) defines the activity of system operation. Subsection (3) allows the Secretary of State to impose a legal separation requirement that the same person does not hold both a system operation licence and any other electricity licence (supply, generation, transmission, distribution, interconnection).

110. Subsection (4) allows Secretary of State to make consequential, transitional, incidental or supplementary provision. Subsection (4)(a) allows changes to be made to primary or secondary legislation which would be necessary to enable the Secretary of State to add the new licensable activity to the current list of licensable activities in sections 4(1) and 6(1) of the Electricity Act 1989 and to

make other amendments to ensure that the new licence fits within the existing statutory framework. Subsection (4)(c) allows changes to be made to electricity licences and codes which may be necessary: as a consequence of the removal of system operation activities from a transmission licence; and to make transitional provision to deal with the transfer of activities from a transmission licence to the new system operation licence. Subsection (4)(b) allows the Secretary of State to determine the standard conditions for the system operation licence.

111. Subsection (5) provides powers for some supplemental matters including requirements for the licence to be in writing, for a licence to continue to be in force for such period as may be specified, and for the Secretary of State to confer functions on the Secretary of State or Ofgem when making the order.

112. New section 56FE sets out the procedure to be followed in making an order under section 56FD and the Parliamentary scrutiny requirements for the exercise of the powers under section 56 FD.

113. New section 56FE(1) provides that the Secretary of State must consult Ofgem and such others as appropriate before making an order. Subsection (2) provides that subject to section 56FE(3) and (4), an order must be laid in draft and approved by Parliament. Subsection (3) provides that an order which only includes provision amending or repealing secondary legislation, or such provision together with provision setting out new standard licence conditions or other licence and code modifications is subject to annulment.

114. Subsection (4) provides that no parliamentary procedure applies where an order only makes provision under section 56FD(4)(b) or (c) setting out new standard conditions or making other licence and code modifications.

115. Subsection (5) gives the Secretary of State certain supplemental powers contained in section 60 of the Electricity Act when making an order under section 56FD. These include power to make provision for the determination of any questions of fact or law which may arise in giving effect to the order; prescribing time-limits within which things are to be done; and providing for matters under the order to be determined by specified persons and in accordance with specified procedures.

Clause 32: Modifications of transmission licences: business separation

116. This clause provides that the Secretary of State may modify the conditions of electricity licences and codes for the purposes of imposing business separation measures between: a) the System Operator's EMR and system operation functions (or any combination of these); and b) any other functions, where this

is necessary or desirable as a result of the conferral of new functions on the System Operator to deliver Contracts for Difference, Investment Instruments and the Capacity Market.

117. Subsection (5) provides a non-exhaustive list of the types of measures this could include, for example:
- legal separation: requiring a separate subsidiary to carry out EMR and/or system operation functions;
- limiting the control or influence which a parent company or other subsidiary can exercise over the body which carries out EMR and/or system operation functions;
- requiring functions to be carried out in separate locations, on separate IT systems or by separate employees;
- requiring separate accounts to be produced, and
- requiring information separation between EMR and/or system operation functions, and other parts of the System Operator's business.

118. Subsection (6) gives the Secretary of State power to require the production of compliance reports concerning the separation measures.

Clause 33: Section 32: Supplementary

119. This clause contains additional provision about the modification of licences and codes under Clause 29.

120. Subsections (1)(a) and (b) allows the power to be exercised differently in different cases or circumstances, or subject to exceptions. Subsection (1)(c) allows the Secretary of State to make any incidental, supplementary, consequential or transitional modifications to licences or codes.

121. Subsection (2)(a) allows the Secretary of State to make different provision for different cases within a licence. Subsection (2)(c) ensures that certain general provisions of the Electricity Act 1989 relevant to this power are applicable. For example, the modifications may require the licence holder to comply with directions by the Secretary of State or Ofgem as to specified matters.

122. Subsection (3) requires the Secretary of State to consult the holder of any licence being modified, Ofgem and others as appropriate before making a licence modification. Subsection (4) provides that this may be satisfied by consultation before as well as after the passing of the Bill. Subsection (5) states that the Secretary of State must publish the modifications as soon as reasonably practicable after they are made.

123. Subsection (6) provides that where the Secretary of State modifies a standard licence condition, Ofgem must incorporate the same modification in the standard conditions of licences subsequently granted. Subsection (7) provides that the modification of part of a standard licence condition does not prevent any other part of a condition being regarded as a standard condition for the purposes of Part 1 of the Electricity Act 1989.

124. Subsection (8) provides that in exercising functions conferred by or under Clause 29, the Secretary of State is bound by the principal objective and general duties set out in Part 1 of the Electricity Act 1989. Subsection (9) amends sections 33(1) of the Utilities Act 2000 so that any modifications of standard conditions are treated as incorporated in the standard conditions.

CHAPTER 5: CONTINGENCY ARRANGEMENTS

Summary and Background

125. This chapter provides the Secretary of State with a power to transfer the EMR delivery functions from the national system operator to a new delivery body.

Commentary on Clauses

Clause 34: Power to transfer EMR delivery functions

126. This provision confers a power on the Secretary of State to transfer the delivery functions for the CFD and capacity market schemes ("EMR delivery functions") to a new delivery body in certain situations. It also introduces Schedule 1, which confers a power on the Secretary of State to transfer designated property, rights and liabilities from the old delivery body to the new one.

127. Subsection (1) confers the power to transfer the EMR delivery functions from the national system operator to a different delivery body. The power is exercisable by negative resolution order (see subsections (9) and (10)).

128. Subsection (2) provides that the new delivery body may be the Secretary of State or any other person or body the Secretary of State considers appropriate. Subsection (3) makes it a requirement that the new delivery body has agreed to have the EMR delivery functions transferred to it.

129. Subsection (4) provides that the EMR delivery functions can only be transferred in four situations. The first situation is where the national system operator is subject to an energy administration order granted under the Energy

Act 2004; energy administration orders may be made by the court under a special regime to ensure that energy network companies provide secure energy supplies in insolvency situations. The second situation is where there has been a change of ownership of the national system operator and the Secretary of State considers it necessary and appropriate to transfer the functions as a result of that change. The third is where the Secretary of State considers that the EMR delivery functions are not being performed efficiently and effectively. Finally, the Secretary of State may transfer the functions if he considers it necessary or expedient in order to further the purposes for which CFD or capacity market regulations are made; for example, if he considers that it is necessary to change delivery body in order to encourage low carbon electricity generation, or in order to meet the demands of consumers for the supply of electricity in Great Britain.

130. Subsection (5) allows the Secretary of State to make further transfers of the EMR delivery functions, including a transfer of the EMR delivery functions back to the national system operator.

131. Subsections (6), (7) and (8) allow the transfer or all or only some of the EMR delivery functions to the new delivery body, and allow the Secretary of State to make incidental, supplementary or consequential provision, including by amending or repealing legislation.

CHAPTER 6: THE RENEWABLES OBLIGATION: TRANSITIONAL ARRANGEMENTS

Summary and Background

132. The Renewables Obligation (RO) is the main financial mechanism by which Government incentivises deployment of large scale renewable electricity projects in the UK. It came into effect in 2002 in England and Wales and in Scotland and in 2005 in Northern Ireland. Banding – whereby different technologies receive different levels of support – was introduced in April 2009. In April 2010, the end date of the RO in Great Britain was extended from 2027 to 2037.

133. Chapter 1 of this Bill contains powers for a contract for difference scheme (CfD) which would be made available to new renewable generation. Once the CfD becomes available, the EMR White Paper proposed a transition phase where new renewable generating stations would be able to choose between the RO or a CfD.

134. The EMR White Paper proposed that the transition phase would end on 31 March 2017, after which the RO would be closed to new generating capacity. The RO would continue to operate for the generating capacity which accredited under it before it closed to new generating capacity.

135. In order to reduce the risk of volatility in the value of a renewables obligation certificate in the final years of the RO, the EMR White Paper proposed that from 2027 the obligation on electricity suppliers to submit renewables obligation certificates should be replaced by an obligation on a body, such as Ofgem, to purchase the certificates at a fixed price. The EMR Technical Update proposed that the cost of purchasing the certificates should be funded by a levy on electricity suppliers. This chapter provides powers for the Secretary of State to implement these proposals in Great Britain.

Commentary on Clauses

Clause 35: Transition to certificate purchase scheme

136. The clause inserts new sections 32AA to 32AD to the Electricity Act 1989 to enable the Secretary of State to make an order which imposes an obligation on the Gas and Electricity Markets Authority (the Authority) or on the Secretary of State to purchase certificates which have been issued to generators in respect of renewable electricity (s.32AA).

137. The certificates are intended to be issued in place of renewables obligation certificates and to be issued in similar circumstances. The price at which the certificates are to be purchased by the Authority or the Secretary of State (the purchasing body) will be fixed and different purchase prices may be set for different periods of time (s.32AB(2)(a) and (b)). Adjustments to the purchase price may also be made for inflation (s.32AB(2)(c)).

138. The order may provide for the manner in which a certificate is to be presented for payment and may set deadlines and other conditions that must be met before the purchasing body is required to purchase the certificate (s.32AB(2)(e) and (h)). The person presenting the certificate for payment may also be required to provide information in a particular form and within deadlines set by the purchasing body (s.32AB(4)). The order may authorise certain fees or charges incurred in making the payment for the certificates to be deducted from the payment for the certificate (s.32AB(2)(l)).

139. The new s.32AC makes provision for an order to impose a levy charged in respect of electricity supplies. The levy would be administered by the Authority or by the Secretary of State (s.32AC(7)). The new s.32AD sets out how the amounts raised by the levy are to be used to meet the cost of

purchasing certificates (s.32AD(3)) or paid into the Consolidated Fund in respect of costs incurred by the administrator of the levy and by the purchasing body. The Secretary of State may also direct sums to be paid into the Consolidated Fund where they are not the administrator of the levy (s.32AD(6)).

140. The order may provide for different levy rates for different periods or different cases or circumstances (s.32AC(3)) and may make exemptions from the levy (s.32AC(4)). The order may impose deadlines for payment of the levy, with interest for late payment (s.32AC(6)(e)) and may provide for enforcement measures if the requirements in respect of the levy are not complied with (s.32AC(6)(i)).

141. In the case of overpayment or underpayment of the levy, the order may require the amount to be set off against or added to the liability of the person to pay the levy for future periods (s.32AC(8)). The order may provide for further payments to be made by electricity suppliers if there is a shortfall in the amounts raised by the levy due to missed or late payments or insolvency (s.32AC(9)).

CHAPTER 7: EMISSIONS PERFORMANCE STANDARD

Summary and Background

142. The Emissions Performance Standard (EPS) will impose an "emissions limit duty" on the operators of new fossil-fuel power stations and associated CCS plant. The duty obliges such plant not to emit more than a specified amount of carbon dioxide (CO_2) in each year of their operation, thereby, reinforcing the existing policy (set out in national policy statements designated under the Planning Act 2008) that no new coal-fuelled plant should be built unless equipped with CCS.

143. The Chapter establishes the EPS as an annual limit, equivalent to 450g of CO_2 per kilowatt hour of electricity for a plant operating at baseload. This is below the level expected of new coal plant when operating unabated, which is nearly 800g/kWh. It is, however, above the level of modern combined cycle gas-fired power stations, which operate at below 400g/kWh

144. Provision is made to except from the requirements of the EPS plant which form part of the UK's CCS Programme or benefit from European Union or Contract for Difference funding under Part 1 for commercial scale CCS. Providing exceptions for such plant reduces regulatory risk and, therefore,

supports the development of CCS technology. Provision is also made to apply the emissions limit duty with or without modification in a range of non-standard scenarios.

145. The clauses provide for the making of regulations about monitoring and enforcing compliance with the limit, with a view to basing both monitoring and enforcement arrangements on those for the EU Emissions Trading System, so as to minimise regulatory duplication.

Commentary on Clauses

Clause 36: Duty not to exceed annual carbon dioxide emissions limit

146. This clause places a limit on the amount of annual emissions allowed from certain new fossil fuel generating stations and associated CCS plant. The limit is based on the individual plant's installed generating capacity, a statutory rate of emissions and a load factor of 85%, and the provisions place a duty on operators not to exceed this limit in any one year (subsection (1)).

147. To calculate the limit, a plant's capacity in MW is multiplied by the statutory rate in g/kWh (which is the same as kg/MWh) and 7.446. The figure of 7.446 represents 85% of the total operating hours available in a year (8760) divided by 1000, which converts the limit from kg into tonnes.

148. The statutory limit is set at 450g/kWh until 2045. The duty is applicable to fossil fuel plant that are built pursuant to a relevant consent made on or after the date the EPS provisions come into force (subsection (2)).

149. A relevant consent is one which is granted under the Planning Act 2008, s36 of the Electricity Act 1989 or Article 39 of the Electricity (Northern Ireland) Order 1992. This means that the provisions will only apply to plant at or over 50MW electrical capacity (subsection (3)(a)) that are given development consent by the Secretary of State (in England and Wales), Scottish Ministers (in Scotland) or the Department of Enterprise, Trade and Investment (in Northern Ireland).

150. The regime covers plant which use fossil fuel (defined in clause 38). It is intended that it should not cover generating stations which only make incidental use of fossil fuel for safety, start-up or stabilisation purposes (such as biomass plants): provision is therefore made (in subsection (6)(c)) for emissions from such use of fossil fuel to be disregarded for the purposes of the EPS. The regime does, however, cover generating stations using fuel produced from a CCS plant, and the associated CCS plant itself (subsection (3)). Further provision may be made in regulations as to what constitutes

associated CCS plant for these purposes (clause 38), but it is intended that the regime will cover Integrated Gasification Combined Cycle (IGCC) plant as well as gasification plant producing, for example, hydrogen from fossil fuels as a fuel for a generating station which is not built as part of the generating station (see further the definition of "CCS plant" in clause 38). In such a case, while the power station itself would have no CO_2 emissions, the emissions limit duty would ensure that the CCS plant supplying fuel to the generating station would have to apply CCS to the CO_2 that would otherwise be emitted as a by-product of the manufacture of non-CO_2 emitting fuel.

151. The Secretary of State is given power to make provision in regulations about the interpretation of the emissions limit duty (subsection (5)(a)) and to apply the duty with modifications as provided for in Part 1 of Schedule 3 (subsection (5)(b)). Regulations can include provisions: to determine emissions from fossil fuel plant and other concepts referred to in subsections (1) to (3); to include or exclude emissions by reference to regulations implementing the EU Emissions Trading System (subsection (6)); and to exclude emissions associated with the supply of heat to customers from combined heat and power plants (subsection (7)).

152. The Secretary of State is given powers to make regulations relating to monitoring and enforcing the emissions limit duty (subsections (5)(c)).

Clause 37: Exception for CCS demonstration projects

153. This clause allows the Secretary of State to except plant from the annual CO_2 emissions limit where a project demonstrating CCS is being carried out at the plant and it is being supported by public funding or through CFDs. Exceptions can either be for individual plant (subsection (1)(a)) or for plant meeting a particular description (subsection (1)(b)).

154. The Secretary of State must issue, and have regard to, a statement of his policy in relation to making these Orders (subsection (4)). The Secretary of State must also consult on this statement of policy (subsection (5)), as well as on the orders themselves (clause 39(7)); consultation on the statement of policy may take place before enactment of the EPS provisions (subsection (6)).

Clause 38: Interpretation of Chapter

155. This clause defines terms used in other parts of the Chapter.

156. The clause defines "fossil fuel" as coal, lignite, peat, natural gas, crude liquid petroleum, bitumen or any substance which is produced directly or indirectly from these product for use as fuel. This definition, taken with the provisions of clause 36 and regulations to be made under clause 36(6)(c) will mean that a

plant which burns waste materials, which may include materials manufactured from fossil fuel sources but which have not been produced for use as a fuel, will not be counted as fossil fuel plant as a result (so that the EPS does not apply to Energy from Waste plant).

Clause 39: Regulations and orders under Chapter 7

157. This clause requires any order or regulation under this Chapter to be made by statutory instrument and, except as noted below, to be subject to affirmative procedure.

158. Regulations on monitoring and enforcement are subject to negative procedure, and Orders excepting CCS projects must be laid before Parliament once they are made.

159. The Secretary of State is required to consult such persons as Secretary of State thinks appropriate before making regulations or orders.

CHAPTER 8: STRATEGY AND POLICY STATEMENT

Summary and Background

160. This chapter introduces a new document, a strategy and policy statement, which will set out the Government's strategic priorities for the energy sector in Great Britain, describe the roles and responsibilities of various players who implement, or are affected by, GB energy policy and describe policy outcomes which are to be achieved by the regulator and the Secretary of State when regulating the sector. The strategy and policy statement will replace existing guidance for the regulator on social and environmental matters. These provisions implement the recommendations of the Government's review of the Gas and Electricity Markets Authority ("the Authority") published in July 2011.

Commentary on Clauses

Clause 40: Designation of statement

161. Subsection (1) gives the Secretary of State a power to designate a strategy and policy statement. Subsection (2) provides that a strategy and policy statement will comprise the following parts:

- "strategic priorities" which are the strategic priorities, and other main considerations, of Her Majesty's government in formulating its energy policy for Great Britain (including offshore areas as described in subsection (4)),

- "policy outcomes" which are particular outcomes to be achieved as a result of the implementation of that policy, and
- the roles and responsibilities of persons involved in implementing that policy or who have other functions that are affected by it. This could include, amongst others, the Secretary of State and the Authority.

162. The Secretary of State must publish any strategy and policy statement (either as originally designated or as amended) in such a manner as he considers appropriate (subsection (3)).

163. Subsection (5) provides definitions of terms used in Chapter 8.

Clause 41: Duties in relation to a statement

164. This provides that the Authority has the duty to "have regard to" the strategic priorities in the statement (subsection (1)). Subsections (2) and (3) confer a duty on both the Secretary of State and the Authority to carry out their regulatory functions in a manner which the Secretary of State or the Authority consider is best calculated to further the delivery of the policy outcomes in the statement, subject to the application of the principal objective duty (as defined in subsection (6) – essentially, the duty to carry out functions in the manner best calculated to protect the interests of existing and future consumers, wherever appropriate by promoting competition).

165. Subsections (4), (5) and (9) explain what is meant by "regulatory functions". Regulatory functions can be found in a number of places. For example, Part 1 of the Gas Act 1986 and Part 1 of the Electricity Act 1989, various provisions in the Energy Acts 2004, 2008, 2010 and 2011 as well as other provisions in this legislation and any future functions to which the principal objectives and statutory duties in the Gas Act 1986 and Electricity Act 1989 will be applied.

166. The Authority also has a duty to give notice to the Secretary of State if at any time it concludes that a policy outcome is not realistically achievable (subsection (7)). Subsection (8) sets out what information this notice must include, that is the grounds on which the Authority reached its conclusion and what, if anything, the Authority is doing or planning to do to further the delivery of that outcome as far as is reasonably practicable.

Clause 42: Exceptions from section 41 duties

167. This details some specific functions where the duties in section 41(1) and (2) will not apply. It mirrors some exceptions from application of the principal objective and statutory duties for regulation of the GB energy sector in section 4AB of the Gas Act 1986 and section 3D of the Electricity Act 1989.

168. In particular, subsection (1) provides that the duties under section 41(1) and (2) do not apply to certain consenting functions of the Secretary of State (for example, consent for construction of a generating station under section 36 of the EA 1989).

169. Subsection (2) provides that the same duties do not apply to the Authority when exercising functions determining disputes or competition functions which are held concurrently with the Office of Fair Trading.

170. Subsection (3) provides that the new duties in section 41(1) and (2) will not affect any obligation on the Authority or the Secretary of State to perform or comply with any other duty or requirement.

Clause 43: Review

171. Subsection (1) places a duty on the Secretary of State to review the statement every 5 years and subsection (3) provides that the review must take place as soon as reasonably practicable after the end of each 5 year period. For the first strategy and policy statement, the 5 year period will begin to run from the designation of the statement (subsection (2)(a)). For subsequent strategy and policy statements, subsection (2)(b) provides that the trigger point for the 5 year period beginning to run will depend on when the review of the previous statement took place (as defined in subsection (11) – see paragraphs 167 to 169).

172. Subsection (4) sets out triggers for when the Secretary of State may review the statement before the end of the 5 year period. These are:

- following a Parliamentary general election;
- after the Authority has given notice (under section 41(7)) to the Secretary of State that it is not realistically achievable to meet a policy outcome in the statement;
- the Government's energy policy has significantly changed (a significant change being one that was not anticipated at the relevant time (as defined in subsection (11)) but which would have led to the statement being different in a material way if it had been anticipated at that time (subsection (5)), or
- Parliament did not give approval to an amended statement following the last review (that is, following the last review an amended statement was laid before Parliament but no approval was given so it was not designated (subsection (12)).

173. Subsection (6) explains that following a review the Secretary of State can amend the statement, leave it unchanged or withdraw it. In all cases consultation with the persons listed in subsection (10) will be required.

174. Both an entirely new statement or a change to part of the previous statement constitute an amendment (subsection (6)(a)) but changes to the statement to correct clerical or typographical errors are not amendments for these purposes (subsection (8)).

175. If the decision is taken to amend the statement, this will only take effect if the Secretary of State has followed the procedural requirements in section 44 (including securing Parliamentary approval under section 44(8)) and designated the amended statement as the strategy and policy statement (subsection (7)). At the point of designation, the previous strategy and policy statement will cease to have effect (subsection (9)). The 5 year period for review begins on the date of designation of the amended statement (subsection (11)(a)(i)).

176. However, if Parliament does not approve the amended statement under section 44(8), the existing statement will remain in force and the 5 year period for review begins to run from the time when the statement was laid before Parliament for approval (subsection (11)(a)(ii)). In this situation, the Secretary of State does have the power to review the statement before the end of the 5 year period if he wishes (as set out in subsection (4)(d) – see paragraph 164).

177. If the decision is taken to leave the statement as it is, the 5 year period for review begins when that decision is taken (subsection (11)(b)).

Clause 44: Procedural requirements

178. This sets out the procedural requirements for preparing and designating a statement (including any amendments to a statement) (subsections (1) and (2)). Preparation of a draft statement may begin before the passing of this Act (subsection (9)). The Secretary of State must:

- prepare a draft and consult the Authority, Scottish Ministers and Welsh Ministers on it ("first consultation") (subsections (3) and (4));
- revise the draft in light of responses to the first consultation and publish a revised draft for a wider consultation (that is, those mentioned above and any other persons that the Secretary of State considers appropriate) ("second consultation") (subsection (5));
- amend the revised draft in light of responses to the second consultation and prepare a report summarising the second consultation responses and any amendments made as a result (subsection (6)), and
- lay the report and the final draft statement before Parliament, to be passed by affirmative resolution (subsections (7) and (8)).

Clause 45: Principal objective and general duties in preparation of statement

179. Subsection (1) provides that the principal objective and general duties found in sections 4AA to 4B of the GA 1986 apply to the Secretary of State when determining the policy outcomes (determination of which is defined as the "relevant function" in subsection (3)) for any strategy and policy statement (be it the first statement or subsequent amended statements).

180. Subsection (2) makes identical provision for the principal objective and general duties in sections 3A to 3D of the EA 1989.

Clause 46: Reporting requirements

181. This amends the Utilities Act 2000 to build on the Authority's current reporting requirements. Subsection (2) adds a new section 4A to the Utilities Act 2000.

182. New subsections (1) to (5) of section 4A ensure that the Authority publishes certain information in relation to the strategy and policy statement. This information is specified in new section 4A(3) and includes strategy and proposed actions for how it will further delivery of the policy outcomes, both in the forthcoming year and beyond.

183. The provisions give the Authority some flexibility to publish the information in the way which best fits with its existing reporting cycle, no matter when a strategy and policy statement is published. New section 4A(1) ensures that, as soon as reasonably practicable after designation of a strategy and policy statement, the Authority publishes a document containing the required information. New section 4A(4) gives the Authority discretion to publish the information in its next forward work programme (which it is obliged to publish under section 4 of the Utilities Act 2000) if it is not reasonably practicable to publish it in an earlier document.

184. New section 4A(2) ensures that the Authority publishes the same information (updated) in each forward work programme, unless the Secretary of State has given notice that the statement's designation has been, or is expected to be, withdrawn before the beginning of the financial year (subsection (6)). New section 4A(5) gives the Authority discretion to publish the information in a separate document in relation to the first financial year after designation, if it is not reasonably practicable to include it in a forward work programme.

185. Subsection (7) ensures that the same procedural requirements apply to publication of a document containing the required information as apply to a forward work programme. Subsection (8) defines certain terms for the purpose of the new section.

186. Section 46(3) amends section 5 of the Utilities Act 2000 setting out further information related to the strategy and policy statement that must be included in the Authority's annual report. The information is set out in new subsections (2A) and (2B) and includes information which relates to the strategy and proposed actions which will be set out in the forward work programme as identified above and an explanation of any failure to take those actions. Subsection (2C) defines certain terms for the purposes of the section.

Clause 47: Consequential provision

187. Subsection (1) repeals the provisions under which the existing social and environmental guidance is issued.

188. Subsections (2) and (3) amend the GA 1986 and the EA 1989 (respectively) so as to ensure that the new duty is subject only to the principal objective duty.

PART 2: NUCLEAR REGULATION

CHAPTER 1: THE ONR'S PURPOSES

Summary and Background

189. Chapter 1 sets out the purposes of the Office for Nuclear Regulation ("ONR"). These purposes define the ONR's roles and responsibilities and cover each of the core areas in which the ONR will be able to exercise its functions.

Commentary on Clauses

Clause 48: The ONR's purposes

190. This is a central clause which sets out each of the ONR's purposes, which the rest of the Chapter goes on to define. It is a central clause because the ONR's purposes, in broad terms, define its areas of responsibility. More specifically, clause 59 (which sets out the ONR's principal function), puts the ONR under an obligation to do whatever it considers appropriate for its purposes – including assisting and encouraging others to further those purposes.

191. There are five sets of purposes; those relating to nuclear safety, to nuclear site health and safety, to nuclear security, to nuclear safeguards and to transport.

Clause 49: Nuclear safety purposes

192. This clause defines the ONR's nuclear safety purposes which relate to protecting persons against the risks of harm from ionising radiation from, or in connection with, "relevant nuclear installations". Risks of harm from ionising

radiation that may arise from, for example, the construction, operation and decommissioning of such installations or from the storage of radioactive material used or stored in them are within the scope of this purpose (see subsection (1)(a) to (c)). This clause brings the specific hazards posed by nuclear installations within the ONR's remit.

193. "Relevant nuclear installations" is defined in subsection (3). These are former, current or proposed "nuclear installations" within the meaning of section 26 of the Nuclear Installations Act 1965, located (or to be located) anywhere in Great Britain and which were required, require, or would require (as the case may be) a site licence under section 1 of that Act. These installations include nuclear reactors, enrichment facilities and installations designed or adapted to store nuclear fuel. Reactors that are part of a means of transport (such as a nuclear submarine), are not included within this definition.

Clause 50: Nuclear site health and safety purposes

194. This clause defines the ONR's non-nuclear or "conventional" health and safety purposes. This makes clear that one of the purposes of the ONR is securing the protection of persons at work on licensed nuclear sites in Great Britain, as well as the prevention of risks to the health and safety of other persons which arise from the activities carried out on these. This ensures that all work related hazards on nuclear sites are within the ONR's remit.

Clause 51: Nuclear security purposes

195. This clause sets out the ONR's nuclear security purposes. Key areas which these purposes cover include ensuring the security of nuclear premises and of nuclear materials and certain software or equipment stored or used at such premises (see subsection (1)(a) and (b)).

196. Nuclear premises are sites which are licensed or are required to be licensed under section 1 of the Nuclear Installations Act 1965 or premises where nuclear material is used or stored (see the definitions of "nuclear premises" and "nuclear site" in subsection (3)). "Nuclear material" is defined in subsection (3) of this clause as any fissile material in the form of a uranium or plutonium metal, alloy or compound. However, this definition of "nuclear material" can be altered by regulations in one of two ways. First, by regulations made by the Secretary of State contained in the definition of nuclear material in clause 51 (3) in order to cover fissile materials other than that uranium or plutonium metals, alloys or compounds. Secondly, the Secretary of State may make regulations under subsection (4) to modify the definition of nuclear material in its entirety. Therefore, the security purposes of the ONR in this respect are not fixed but can be expanded to cover other materials that need protection from a security perspective.

197. The nuclear security purposes also cover ensuring the security of "nuclear construction sites" and of nuclear material which is to be transported or is in the course of being transported anywhere within the UK (including its territorial waters), to or from nuclear premises in the United Kingdom, or on ships registered in the UK under the Merchant Shipping Act 1995 operating anywhere in the world (see subsections (1)(d) and (g) and (3)). The definition of "nuclear construction site" is to be found in subsection (3) of this clause. It covers civil nuclear sites under construction which are located within 5km of an existing nuclear site. The intention here is to capture within the ONR's purview for security those eight sites which have been identified for possible nuclear new build in the *National Policy Statement for Nuclear Power Generation* since each of them is within 5 kilometre of an existing nuclear site.

Clause 52: Notice by Secretary of State to ONR specifying sensitive nuclear information

198. This clause relates to one of the other areas of the ONR's nuclear security purposes – namely ensuring the security of sensitive nuclear information in the United Kingdom (see clause 5(11)(f). "Sensitive nuclear information" is principally defined in subsection (3) of clause 51 as information relating to, or capable of use in connection with, the enrichment of uranium – i.e. the treatment of uranium that increases the proportion of isotope 235 contained in it (isotope 235 is fissile and can be used in the production of a nuclear weapon).

199. Clause 52 permits the Secretary of State, by notice to the ONR, to expand on the definition of "sensitive nuclear information" in connection with activities at or relating to nuclear premises – and thus the purpose of the ONR in ensuring the security of such information. However, the power can only be exercised where the Secretary of State considers information should be protected in the interests of national security (see subsection (1)). The Secretary of State must consult the ONR before issuing such a notice; this is to ensure that the ONR's civil nuclear security expertise is fed into any additional definition of sensitive nuclear information.

Clause 53: Nuclear safeguards purposes

200. This clause sets out the ONR's purposes relating to nuclear safeguards. There are two purposes here. First, ensuring compliance by the United Kingdom with its safeguards obligations (and assisting Ministers of the Crown in this respect). Second, developing future safeguards obligations.

201. Nuclear safeguards are measures to verify that States comply with their international obligations not to use nuclear materials from their civil nuclear

programmes to manufacture nuclear weapons. The obligations to take these measures arise under international law or under the Euratom Treaty. The current key obligations on the UK Government, which are contained in Articles 77 to 85 of the Euratom Treaty and agreements relating to the Treaty on the Non-Proliferation of Nuclear Weapons, are to be found in clause 74(2). These primarily constitute "the safeguards obligations" for the purpose of the clause. "Primarily" because further such obligations may be notified to the ONR by the Secretary of State under clause 74(2)(d) and which if notified will expand the ONR's purposes here.

Clause 54: Transport purposes

202. The ONR's transport purposes relate to ensuring that the transport of radioactive material in Great Britain is secure and does not cause harm (see subsection (1)). The clause defines the meaning of "radioactive material" by reference to the international transport agreements that govern the transport of goods by road, rail and inland waterway; and consistent with those agreements ensures that all preparatory processes to transport, such as loading and packaging, and delivery are part of the ONR's remit (see subsection (2)(a) and (b) respectively). However, the agreements upon which the meanings of 'radioactive material' are based – ADR/RID/ADN – might fall away in future or become obsolete if new international agreements come into force, and so the definition is supported by a power for the Secretary of State to amend the definition by regulations (see subsection (4)).

203. The ONR's transport purposes do not extend to transport by sea and air as the maritime transport of radioactive goods and their transport by air have separate regulatory regimes. In the case of nuclear material (as defined in clause 51(3)), the security of this material by sea and air (as well as by land) is included within the nuclear security purposes (see clause 51(1)(g)). Otherwise the transport of nuclear and radioactive material by air and sea is outside of the ONR's purposes.

CHAPTER 2: NUCLEAR REGULATIONS

Summary and Background

204. Chapter 2 provides powers to the Secretary of State to make nuclear regulations. An underlying purpose in conferring the powers is to allow for flexibility in the regulation of the civil nuclear industry and the ability to react effectively in this evolving area.

Commentary on Clauses

Clause 55: Nuclear Regulations

205. This clause gives the Secretary of State the power to make regulations for any of the following purposes – the nuclear safety, nuclear security, nuclear safeguards, and transport purposes, as defined in clauses, 49, 51, 53 and 54, respectively. These regulations are referred to in the Bill as "nuclear regulations".

206. Notably, the clause omits to give the Secretary of State power to make regulations for the nuclear site health and safety purposes (as defined in clause 50). Although the ONR will have regulatory responsibility for conventional health and safety on nuclear sites, regulations will continue to be made for this purpose under section 15 of the Health and Safety at Work etc. Act 1974.

207. This clause, together with Schedule 4, elaborates on the types of provision that may be included in nuclear regulations. For example, regulations may make provision applying to acts outside the United Kingdom by United Kingdom persons (see subsection (7)(a)), such as imposing duties on United Kingdom nationals in relation to the disclosure of sensitive nuclear information when outside the United Kingdom. A United Kingdom national is defined in subsection (9). In addition, regulations could be made in relation to United Kingdom ships carrying nuclear materials and operating anywhere in the world because of the way that the nuclear security purposes are defined in clause 51(1)(g).

208. Subsection (10) and (11) require any nuclear regulations which contain provision made exclusively for the safeguards or the security purposes, or exclusively for both, to identify where this is the case. The reason for this is to provide for clarity about whether the regulations were made for other purposes, either wholly or in part. Not to do this could have unhelpful repercussions. For example, it is not the intention that the powers for inspectors to issue improvement or prohibition notices under Part 2 of Schedule 6 should extend to enforcing regulations made for safeguards or security purposes – see, for example, paragraphs 3 (1) and (5) of Schedule 6 to the Bill. Specifying the underlying purpose in these cases makes the extent of their powers clear to inspectors and those potentially affected.

Clause 56: Civil liability for breach of nuclear regulations

209. Subsection (1) of this clause creates civil liability for breaches of nuclear regulations that cause damage, such as person injury or fatal accidents (except where nuclear regulations provide that no such liability is to arise – see subsection (3)). In effect (unless regulations provided otherwise), it would be a breach of statutory duty, to contravene a duty imposed by nuclear regulations

and a person who has suffered loss as a consequence, would be entitled to sue for damages.

210. Defences to such a civil action may be provided for in nuclear regulations (see subsection (3)(b)), as well as requirements imposed on a claimant to prove, for example, that the person (see subsection (3)(a)) causing them damage failed to take reasonable precautions. In certain circumstances it might not be appropriate for civil liability to arise in the absence of fault.

Clause 57: Nuclear regulations: procedure

211. Subsection (1) makes it clear that that the Secretary of State has the power to make nuclear regulations independently of proposals for such regulations made by the ONR under clause 61.

212. However, before the Secretary of State may make nuclear regulations, he or she must consult the ONR (unless the regulations are made to give effect, without modifications, to proposals from the ONR under clause 61, see subsection (2)(a)). In addition, the Secretary of State is required to consult the Health and Safety Executive if the regulations will modify provisions of health and safety regulations and such other persons as he or she considers appropriate (subsection (2)(b) and (c)).

213. Finally, clause 88 provides that nuclear regulations are to be contained in a statutory instrument and for the Parliamentary procedure for such regulations – which is to be the negative resolution procedure unless amendment is made to Nuclear Installations Act 1965 (see clause 88(2) and (4)) – in which case the affirmative resolution of both Houses is required.

CHAPTER 3: OFFICE FOR NUCLEAR REGULATION

Summary and Background

214. Chapter 3 sets out how the ONR will be structured and explains how it will operate, including: the constitution of the ONR; how the organisation will report and be accountable for its activities and the delivery of its objectives; and its financial arrangements.

Commentary on Clauses

Clause 58: The Office for Nuclear Regulation

215. Chapter 3 sets out how the ONR will be structured and explains how it will operate, including: the constitution of the ONR ; how the organisation will

report and be accountable for its activities and the delivery of its objectives; and its financial arrangements.

216. This clause establishes the Office for Nuclear Regulation (or as it is referred to in the rest of the Bill – "the ONR") as a body corporate. Therefore, it will have a legal identity in its own right, independent of its members.

217. The clause also introduces Schedule 5 which covers a broad range of matters relating to the ONR, including its constitution (see paragraphs 2 and 3, for example), how staff and members of the ONR are to be appointed and remunerated (see, for example, paragraphs 4 and 11 to 13).

218. Schedule 5 also permits the ONR to delegate its functions to staff and committees and sub-committees (paragraphs 16 and 18). Only members of the ONR's staff (paragraph 18(3)) can be delegated to make regulatory decisions (or perform "regulatory functions") in particular cases. This includes executive members of the ONR and other members of staff such as secondees but does not include non-executive members of the ONR. "Regulatory function" is defined in clause 87.

219. Committees and sub-committees may include people who are not members or members of staff of the ONR (see paragraph 16(2)). However, such committees or sub-committees will not be able to perform regulatory functions on behalf of the ONR but may, for example, have an advisory role.

220. Other matters of interest covered by the Schedule are as follows. The ONR will not be a Crown body and therefore its staff and members will not be civil servants (see paragraphs 1, 5 and 14) – except they will be treated as such for the purposes of the Official Secrets Act 1989 (see paragraph 6).

221. Furthermore, the ONR (or its "Board") will consist of a non-executive Chair, the Chief Nuclear Inspector and the Chief Executive Officer (who both will be employees of the ONR), as well as further executive members (i.e. members who are employees of the ONR) and non-executive members (i.e. members who are not members of the ONR's staff). It is the intention that the overall number of non-executive members (at least 5 but no more than 7) will exceed the number of executive members (up to 4 in total) (see paragraphs 2, 3 and 4). There is also provision for the Health and Safety Executive ("HSE") to appoint a non-executive member to the ONR's Board as well as for the need for there to be a non-executive member with security experience (see paragraph 4(3) and (4)).

222. Executive members will be appointed by the ONR and non-executive members, other than the HSE member, will be appointed by the Secretary of State (see paragraph 2).

223. Under paragraph 21, the ONR will be required to keep financial records, and submit accounts in respect of each financial year to the Secretary of State as well as to the Comptroller and Auditor General (who will need to audit the accounts and report on them to Parliament). "Financial year" is defined as a period of 12 months ending on 31st March in paragraph 28.

224. The ONR will also be required to prepare a long-term strategy for the carrying out of its functions and must act in accordance with this strategy (see paragraph 22). The ONR will be required to consult when preparing its strategy and the strategy will require Secretary of State approval before being laid before Parliament. The strategy must be reviewed at least every 5 years.

225. The ONR will also be required, under paragraph 23, to prepare an annual plan about its activities for each forthcoming financial year, which needs approval by the Secretary of State and the ONR will need to take reasonable steps to act in accordance with it.. Additionally, it will need to prepare, in respect of each financial year, a report to the Secretary of State on the performance of its functions during that year (see paragraph 24).

226. Both the annual plan and report and the strategy (including revisions to it) must be laid before Parliament by the Secretary of State and published by the ONR (see paragraph 25), although information may be redacted from the documents in the interests of national security.

227. Finally, the Schedule covers a number of financial matters. The Secretary of State may pay grants to the ONR with consent from the Treasury (see paragraph 26), and the ONR is empowered to borrow money – up to £35 million (with the possibility of that amount being extended up to £80 million by order made by the Secretary of State). The ONR is also given a power in paragraph 20 to indemnify "ONR officers" in certain circumstances against the personal liability they might incur in the execution of their functions. The ONR may only indemnify such officers if it is satisfied that the officer honestly believed they were acting within their "relevant powers" and the act giving rise to the liability is one that the ONR officer was required or entitled to do by virtue of being an ONR officer. "ONR officers" will in practice mean those appointed by the ONR as inspectors under the Bill and fire safety legislation, as well as under the Employers' Liability (Compulsory Insurance) Act 1969.

228. The power provided in paragraph 20 is without prejudice to any other power the ONR may have to indemnify its staff, its members or persons appointed by it. It also does not apply where the ONR is otherwise required to indemnify its officers.

CHAPTER 4: FUNCTIONS OF THE ONR

Summary and Background

229. The provisions in this chapter confer on ONR a variety of powers and duties. These functions reflect a number of the roles which the ONR is to perform. Its primary role will be to regulate the civil nuclear industry in the areas set out in its five purposes. In addition, it will have an important role in maintaining public trust in the regulation of the nuclear industry.

Commentary on Clauses

Functions of ONR: general

Clause 59: Principal function

230. This clause places the ONR under a general duty to do whatever it considers appropriate for its purposes and to assist others to further those purposes.

Clause 60: Codes of practice

231. This clause enables the ONR to issue, revise or withdraw codes of practice with regard to the relevant statutory provisions; section 7 of the Health and Safety at Work etc Act 1974, which covers general duties of employees at work, so far as it relates to the relevant statutory provisions; and health and safety regulations made for nuclear site health and safety purposes (see subsections (1) and (2)).

232. The ONR must consult any government department or person as directed by the Secretary of State or that it considers appropriate. It must then seek consent from the Secretary of State, or the Health and Safety Executive if the code of practice relates to health and safety regulations (see subsections (3) and (4)). The ONR must publish the code of practice, publish any revisions to it or publish a notice that a code of practice is being withdrawn (see subsection (6)). Failure to follow a code of practice will not be a criminal offence but it can be taken into account by a court in criminal proceedings where a relevant statutory provision has been contravened.

Clause 61: Proposals about orders and regulations

233. This clause makes it clear that the ONR may submit proposals to the Secretary of State or the Health and Safety Executive for a number of different types of secondary legislation. First, proposals can be made to the Secretary of State for nuclear regulations (see Chapter 2 above), for orders or regulations under the "relevant enactments" listed in subsection (2) of the clause, as well as proposals about regulations about fees made either under clause 81 of the Bill or section 43 of the Health and Safety at Work Act 1974. The "relevant enactments" refers to legislation which relates to nuclear security and safeguards. The ONR may also submit proposals to the Health and Safety Executive for regulations made under section 15 of the Health and Safety at Work etc Act 1974 where the proposals relate to its nuclear health and safety purposes (see subsection (1)(b)).

234. Before submitting any proposals to the Secretary of State or the Health and Safety Executive, the ONR must consult such persons (including government departments) as they are directed to by the Secretary of State or who ONR consider it is appropriate to consult – see subsection (3).

Clause 62: Enforcement of relevant statutory provisions

235. This clause imposes a duty on the ONR to make adequate arrangements to enforce the "relevant statutory provisions" – for example, to employ sufficient inspectors under Schedule 6 and to ensure they are adequately resourced. For these purposes, "relevant statutory provisions" (see subsection (2)) are the provisions of Part 2 of the Bill or of regulations or orders under Part 2 (such as nuclear regulations), as well as certain sections of the Nuclear Installations Act 1965 and the Nuclear Safeguards Act 2000.

Clause 63: Inspectors

236. This clause introduces Schedule 6 which enables the ONR to appoint inspectors to inspect, investigate breaches of, and enforce the "relevant statutory provisions" (as defined in clause 59(2)). The Schedule also enables connected powers to be conferred on inspectors.

237. Turning to the specific detail of Schedule 6, Part 1 of the Schedule provides the ONR with the power to appoint suitably qualified individuals as inspectors. Inspectors must be appointed by a written instrument (a warrant). The warrant will specify the powers in the Schedule that the inspector is able to exercise and the purposes for which the inspector may exercise them.

238. Part 2 of Schedule 6 gives authorised inspectors the power to issue improvement and prohibition notices. It also sets out the process for how such notices are to be issued, provides for the possibility of appeals against them and makes it a criminal offence to contravene these notices.

239. Improvement notices are issued when, in the inspector's opinion, a person is in breach or is likely to be in continuing breach a provision that ONR enforces and require the person on whom they are served to take action to remedy this within a stated period of time.

240. Prohibition notices are issued when in the inspector's opinion relevant activities, which are being carried out or are likely to be carried out, pose a risk of serious harm to health. A prohibition notice would direct a person to ensure that the activities are stopped and are not resumed or carried out until matters which have been specified in the notice have been resolved.

241. Improvement and prohibition notices cannot be issued for matters relating to provisions made by or under the Nuclear Safeguards Act 2000 or more generally for the safeguards or security purposes (see paragraph 3(1) and (5). This is because there are other specific powers which is it intended that inspectors will use instead. These include the powers to issue notices to require the disclosure of information which are contained in clause 78.

242. Paragraph 5 permits remedial action to be required under improvement and prohibition notices. For instance, a notice might include directions for remedying a situation that could refer to an approved code of practice and/or give a choice as to how to remedy the situation (see sub-paragraph (3)). The paragraph also sets out limitations that apply when an improvement notice is served that relates to the structure of a building (sub-paragraphs (4)-(9)) – to limit requirements from being proposed that are more onerous than those in building control regulations.

243. The arrangements for appealing against an improvement or prohibition notice are set out in paragraph 6 of Schedule 6. An appeal may be made to an employment tribunal which can cancel a notice or confirm it (with or without modifications). The operation of an improvement notice is automatically suspended until an appeal is determined. The operation of a prohibition notice instead can be suspended at the discretion of the tribunal, on an application from the appellant |(see sub-paragraphs (5) and (6)).

244. Part 3 of the Schedule sets out other powers that authorised inspectors may exercise in order to enforce and investigate the regulatory regime. These include powers of entry, powers to seize or otherwise deal with articles or substances that are an imminent danger and powers to take samples and to require information and documents.

245. The power of entry allows an authorised inspector to enter any premises where the inspector considers it is necessary to carry out of their duties. Entry is only possible at a reasonable time unless there is a dangerous situation or delay that would be detrimental to the nuclear security purposes (see paragraph 8).

246. Part 4 includes supplementary provisions relating to the disclosure of information. These provisions mean that information gathered by inspectors using their powers cannot be disclosed except in certain circumstances, including; for the purpose of the inspector's functions, legal proceedings, special reports or with the consent of the person responsible for the premises where the information is gathered. It is an offence for information to be disclosed in contravention of this clause.

247. Paragraph 24 imposes a duty on inspectors to provide information to employees relevant to their health, safety or wellbeing. This information might include, for example, that a prohibition notice had been served on a particular activity. Where information is provided to employees or their representatives, the inspector must provide the same information to the employer.

248. Finally, Part 4 also provides definitions for terms used in this Schedule.

Clause 64: Investigations

249. This clause empowers the ONR to, or to authorise another person to, investigate and produce a report on certain defined matters – called "relevant matters". These matters include any accident or occurrence or situation which the ONR considers it is desirable to investigate for any of its purposes. They also cover any matter which the ONR considers it is desirable to investigate with a view to the making of nuclear regulations or regulations under section 15 of the Health and Safety at Work Act 1974 in connection its nuclear site health and safety purposes. Thus, for example, the ONR might ask a third party to carry out a study and report to it about the effectiveness of regulations in ensuring the safe and secure transport of nuclear materials in the UK.

250. Subject to clause 75 the ONR may publish all or part of a special report. Under clause 75, the consent of the Secretary of State must be sought for the publication of any "security material" (see subsection (1) and (4) of clause 75).

251. Clause 64 also gives the ONR the necessary powers to make payments to anyone (provided they are not a member of the ONR or a member of its staff) who carries out (or assists in) an investigation or makes (or assists in the making of) a special report (see subsections (4) and (5)).

252. Before investigating a matter which appears to the ONR to be, or is likely to be, relevant to the "railway safety purposes", it must consult the Office of Rail Regulation (see subsection (6)). These purposes are defined in paragraph 1 of Schedule 3 to the Railways Act 2005 and relate, for example, to protecting the public or people at work from risks arising from the operation of railways.

Clause 65: Inquiries

253. This clause gives the ONR the power to hold an inquiry into any matter, where it considers it necessary or desirable for any of its purposes. However, the Secretary of State's approval must be given for an inquiry to take place (see subsection (1)). In addition, any such inquiry must be held in accordance with regulations made by the Secretary of State (see subsection (3)). Regulations here may confer powers on the person holding the inquiry (or anyone assisting) to enter premises to acquire information or take evidence on oath and summon witnesses

254. Unless provided otherwise in regulations, the inquiry must be held in public and the report arising from the inquiry published (subsection (4) and (5)(b)).

Clause 66: Inquiries: payments and charges

255. This clause also allows the ONR to make payments to anyone who holds an inquiry under clause 65 or an assessor who assists in such an inquiry. Payments may take the form of remuneration or allowances or expenses.

256. In addition, subsection (2), allows the ONR to pay expenses to witnesses attending inquiries and subsection (3) allows the ONR to make other payments to meet the costs of an inquiry.

257. Subsections (4)-(6) enable the ONR, with the consent of the Secretary of State, to require such persons as it considers appropriate to make payments in connection with an ONR inquiry – i.e. an inquiry held under clause 65. The costs recovered under this provision cannot exceed the ONR's costs associated with the inquiry (subsection (5)) and the underlying purpose of the clause is to enable the ONR to pass the connected costs onto industry. For example if an inquiry related to a specific nuclear site, it might be appropriate for the ONR to apportion some or all of the costs of an inquiry to the licence holder.

Clause 67 Inquires: restrictions on disclosure of information

258. This clause places limits on the disclosure of information obtained by the person holding an inquiry or assisting in it under powers conferred by regulations under clause 65(5)(a). Disclosing such information, except as permitted by paragraphs (a) to (e) of subsection (2) and subsections (3) and

(4), is an offence which can be tried either in the Magistrate's Court or in the Crown Court (see subsection (6)).

Other functions

Clause 68: Provision of information

259. The clause places a duty on the ONR to make such arrangements as it thinks appropriate for the dissemination of information to, for example, industry and the public which is relevant to its purposes. In compliance with this duty for instance the ONR might publish information in print or on its website in order for employers and employees to be better informed about the health and safety risks peculiar to the nuclear industry and how these risks can be managed.

Clause 69: Research, training etc

260. This clause permits the ONR to undertake research, or arrange for someone else to carry out research, in relation to any matter connected with its purposes. It imposes an obligation on the ONR, if it thinks it appropriate, to publish, or arrange the publication of, the results of any research (subsection (1)(b)) – subject to obtaining the necessary consent of the Secretary of State under clause 75 for material which raises security concerns. In addition, the clause empowers the ONR to provide training or arrange for training through third parties (subsections (3)) for any of its purposes.

261. Under subsection (2) the ONR is given the necessary powers to pay for others to carry out research or publish the results on its behalf. Subsection (4) entitles ONR to charge for the training that it provides.

Clause 70: Provision of information or advice to relevant authorities

262. Under this clause**,** a duty is imposed on the ONR to provide certain information or advice if it is requested to do so by "a relevant authority" – i.e. a Minister of the Crown, the devolved administrations, the Health and Safety Executive, the Health and Safety Executive for Northern Ireland, the Civil Aviation Authority and the Office of Rail Regulation (see subsections (1) and (8)).

263. The information which may be requested by any of these authorities (and thus needs to be provided by the ONR to the person requesting it) must be about the ONR's activities (including those of its inspectors – see subsection (3)) and connected to a matter of concern to the authority requesting it (subsection (2)(b)).

264. In addition, a Minister of the Crown may also make a request for information for the purpose of monitoring the ONR's performance of its functions or for the purpose of any proceedings in Parliament (subsection (2)(a)).

265. In the case of advice, the advice requested must relate to something which is of concern to the authority requesting it and be within the expertise of a member, employee or other member of staff (such as a secondee) of the ONR (subsection (4)), or be relevant to any of the ONR's purposes. The ONR is entitled to charge for the provision of information to a relevant authority by virtue of subsection (5) – although regulations made by the Secretary of State under subsection (6) may prevent the charging of a fee in particular cases, classes of cases or circumstances.

Clause 71: Arrangements with government departments etc

266. Subsection (1) permits the ONR, by agreement, to perform the functions of Ministers of the Crown, government departments and other public bodies (whether or not those functions fall within the ONR's purposes). These agreements can only be entered into without the Secretary of State's consent if the function being delegated is the HSE's function of investigating or making a special report under section 14 of the Health and Safety at Work etc Act 1974, or the similar function of the Office of Rail Regulation under the Railways Act 2005 (see subsection (2)(a)(i) and (ii)). Otherwise, such an agreement may only be entered into if the Secretary of State considers the ONR can perform the function appropriately.

267. Whilst the clause permits agreements for the ONR to perform the functions of a Minister of the Crown that arise at common law, it does not permit the ONR to make legislation on behalf of another person (subsection (3)).

268. The agreement between the ONR and the other government department or public body may include provisions for payment to cover the ONR's costs of delivering the specified function.

269. The clause also permits the ONR to provide services or facilities that are outside its purposes, and to charge for these, in connection with a government department's or other public authority's functions (see subsection (5)).

Clause 72: Provision of services or facilities

270. Subsection (1) allows the ONR to provide services or facilities to any person for the ONR's purposes. This would allow, for example, the ONR to provide advice and information to potential applicants for nuclear site licences or to carry out a Generic Design Assessment process on new reactor designs.

271. Subsection (2) would also allow the ONR to carry out activities that are within its expertise but not within its purposes. This can only be done with the permission of the Secretary of State. Examples of these activities would include providing advice on nuclear matters to other nations or to those in the UK who are manufacturing nuclear parts for an international market (not in the UK). The clause could further allow the ONR to undertake such activities, at a cost to be agreed by both parties.

Exercise of functions: general

Clause 73: Directions from Secretary of State

272. This clause enables the Secretary of State to make directions to the ONR. There are three separate powers of direction.

273. Under the first of these, set out in subsections (1) and (2), the Secretary of State has the power to give directions to the ONR about how it must perform its functions, such directions may be specific or of general application. This power might be used, for example, to direct the ONR to conduct a review into nuclear site licence conditions. This power can be used to modify a function of the ONR, however it cannot be used to confer additional functions onto the ONR.

274. Subsections (3) and (4) allow the Secretary of State to issue the second type of direction, if it is necessary or desirable in the interests of national security. This power of direction can be used to confer a function on to the ONR, as well as modify one (subsection (4)(a) and (b)). For example, it might be used to confer powers on the ONR to enable it to deal with an emergency situation that raises issues of national security.

275. Neither of the directions set out in subsection (1) to (4) can be used to issue a direction in relation of a regulatory function in a particular case (subsection (5)).

276. Subsection (6), which is the final power of direction, by contrast, allows the Secretary of State to give a direction to the ONR in a specific instance with regard to a regulatory function (such as to react to specific information received by government in order to ensure the security of nuclear premises). But such directions can only be given where the Secretary of State is satisfied that it is justified because there are exceptional circumstances relating to national security and for nuclear security purposes (subsections (6) and (7)).

277. Directions made under this clause must be laid before Parliament. However, this is unless the Secretary of State considers that making public the direction

would not be in the interests of national security. In such an instance, a memorandum instead, stating that a direction has been given and its date, must be laid before Parliament (subsections (8) and (9)).

Clause 74. Compliance with nuclear safeguards obligations

278. Subsection (1) imposes an obligation on the ONR to do such things as it considers are best calculated to ensure compliance by the United Kingdom, or to enable or facilitate compliance by Ministers of the Crown, with the "safeguards obligations".

279. "Safeguards obligations" are principally defined in relation to Articles 77 to 85 of the Euratom Treaty and two international agreements made in connection with the Treaty on the Non-Proliferation of Nuclear Weapons (see subsections (2)(a) to (c)). The overall purpose of these safeguard obligations is to provide confidence that States do not use nuclear material from civil nuclear programmes to manufacture nuclear weapons. The obligations in question require the UK Government to provide information to the International Atomic Energy Agency and Euratom about nuclear material held within the UK and the use of technology linked with the processing or enrichment of nuclear material.

280. In addition, "safeguards obligations" is defined to include any further obligations or agreements that the Secretary of State specifies in a notice to the ONR (see subsection (2)(d)). The Secretary of State must consult with the ONR before issuing such a notice (subsection (3)(b)). The power here is intended to cater for a number of other existing international agreements and any new agreements which the UK may enter into in the future relating to safeguards – ensuring that it is possible to expand on the ONR's obligations in subsection (1) to help meet the UK's safeguards obligations.

Clause 75: Consent of the Secretary of State required for certain publications

281. Under this clause, the ONR would be required to seek consent from the Secretary of State before publishing any material which it considers relates to its security purposes or any other security connected material which the Secretary of State has directed should be submitted to him or her for consent. In order to minimise the need to seek consent on every occasion, the Secretary of State can issue a general consent for the publication of material – see subsection (6).

Clause 76: Power to arrange for exercise of functions by others

282. The effect of this clause is to enable the ONR to delegate any of its functions to any person, subject to obtaining the Secretary of State's consent. The

clause also permits the ONR to pay the person to whom it has delegated for the performance of the function.

283. Subsection (2) provides that Secretary of State may only give his consent to the ONR delegating a function, if he considers that the person to whom it is proposed to delegate can perform the function appropriately.

Clause 77: Co-operation between ONR and Health and Safety Executive

284. This clause requires ONR and HSE to enter into arrangements (and to maintain these) in order to ensure mutual co-operation and the exchange of information about their respective functions. This will help to ensure that the two regulators have a consistent approach to the regulation of health and safety, and that interfaces between their respective health and safety enforcement activities are effectively managed.

Information etc

Clause 78: Power to obtain information

285. This clause provides the ONR with a power to require information by notice, for the purposes of carrying out its functions. Failure to comply with a notice requiring information is a criminal offence (subsection (4)(a)). It is also an offence to knowingly or recklessly provide false information in response to a notice (subsection (4)(b)).

286. This clause might be used, for example, to provide certain safeguards related information such as records detailing quantities and locations of nuclear material.

287. Notices may impose a continuing requirement to provide information, as opposed to simply imposing one-off requirements for information, for example, to provide quarterly returns (see subsection (3)).

Clause 79: Information and articles etc held by HMRC

288. This clause enables the Commissioners for Her Majesty's Revenue and Customs to provide the ONR or its inspectors with information about imports whether or not it has been requested by the ONR or an inspector (see subsection (3)) and in order to assist them. Therefore, HMRC may act proactively. It also allows officers of Revenue and Customs to seize and detain imported goods to facilitate the ONR or its inspectors in the exercise of their functions. Anything that is seized by HMRC for this purpose may only be detained for a maximum of 2 working days.

Clause 80: Disclosure of Information

289. This clause prohibits the disclosure of certain categories of information, of what the clause calls "protected information". For example, information provided by HMRC to the ONR or its inspectors about imports under clause 79 or information the ONR has required by notice under clause 78. It is a criminal offence to disclose information in contravention of the clause – see subsections (2) (7) and (8) – subject to certain exceptions.

290. Exceptions include disclosure under the Freedom of Information Act 2000. They also include disclosure to certain persons -such as to a Minister of the Crown; certain organisations that the ONR will work closely with or will have shared interests with, such as the HSE and the Environment Agency; and local authority officers and police officers. The clause also confines the purposes that this information can be used for by these people or bodies (see subsection (6)) . The information can also be disclosed, for example, with the consent of the person who provided it, for the purpose of an ONR inquiry, investigation or legal proceedings; or if the information is released in a way that prevents it from being identified as relating to a particular person or case.

Fees

Clause 81: Fees and charges

291. Subsection (1) enables the Secretary of State, by regulations, to make provision for fees to be payable in connection with the performance of the ONR's functions under the relevant statutory provisions and the functions of inspectors appointed under Schedule 6. This power supplements that in section 43 of the Health and Safety at Work etc. Act 1974, which will enable regulations to be made for the payment of fees in connection with the ONR's performance of its functions under that Act, as well as section 24A of the Nuclear Installations Act 1965, which provides for fees in connection with nuclear site licence activities.

292. In addition, subsection (2) enables the Secretary of State to make regulations to enable charges to be payable by specified persons in respect of any of the ONR's expenses which are not otherwise recoverable by the ONR under fees regulations referred to above, or via the 1965 Act or through a provision of the Bill.

293. Regulations made under these powers will specify the person who will be liable to pay the relevant fee or charge and the amount of the fee or charge, or how the amount is to be determined. Regulations may provide for the ONR to estimate the amount of the fee or charge payable by a particular person if required. Fees or charges cannot be recovered from specified categories of person – in particular, employees.

294. The majority of such costs are already recoverable through the existing fees and charges provisions. The clause will enable the Secretary of State to introduce secondary legislation which extends the ONR's capacity to recover its costs.

CHAPTER 5: SUPPLEMENTARY

Summary and Background

295. This chapter covers a range of supplementary matters. These include staff and property transfers, supplementary provision relating to criminal offences under Part 2 and minor and consequential amendments.

Commentary on Clauses

Offences

Clause 82: Provision relating to offences under this Part

296. This clause introduces Schedule 7 which contains provisions relating to offences. The schedule sets out where an offence may be treated to have been committed (paragraph 2) and provides details of the circumstances under which the time for bringing summary proceedings can be extended (normally 6 months from the commission of an offence) such as where there is an ongoing inquiry or investigation being carried out by the ONR (paragraphs 3 and 4). The schedule also covers the circumstances under which an offence is deemed to continue (paragraph 5); where the offence is the fault of another person (paragraph 6); the approach to be taken in terms of liability when the offence is committed by a body corporate (paragraph 7); who can institute proceedings in England and Wales (paragraph 8); and that an authorised inspector may prosecute proceedings in the Magistrates' Court (although not in Scotland) (paragraph 9).

297. The schedule also provides that if regulations under this Part create an offence consisting of a failure to comply with a duty to do something so far as practicable, then they may also provide that the burden of proof passes to the defendant to prove that it was not practicable to do more than was in fact done (paragraph 10). Paragraph 11 provides for the admissibility in evidence of the fact that an entry has been made on a relevant register or record, where there is a requirement to do so, or the fact that it has not been recorded in that record or register and paragraph 12 sets out how a court can order an offence to be remedied in the event that it is possible to do so.

Supplementary

Clause 83: Reporting requirements of Secretary of State

298. Under this clause the Secretary of State must make a report to both Houses of Parliament, in respect of each financial year, on how he or she has exercised powers under the Bill in relation to the ONR. The report must be laid before each House.

299. The purpose of this annual reporting is to facilitate Parliamentary scrutiny of powers exercised by the Secretary of State in relation to the ONR, for instance, the appointment or dismissal of ONR non-executive members, approving the appointment of the Chief Nuclear Inspector or the Chief Executive Officer, the modification of the ONR's strategy or annual plan or the use of the Secretary of State's powers of direction.

Clause 84: Notices etc

300. This clause contains a variety of provisions relating to notices served under any of the "relevant statutory provisions", a phrase which in this context includes Part 2 of the Bill (and therefore nuclear regulations or the provisions in Part 2 of Schedule 6 to the Bill relating to improvement and prohibitions notices) but not the Nuclear Safeguards Act 2000 as it already contains provision covering this area. The clause provides that any such notice must be made in writing and sets out how valid service of a notice may be affected in the case of natural persons, a body corporate (such as companies) and partnerships – for example, by postal service or delivering it to the last known address of a natural person (see subsection (3)(a) and (b) and subsection (5)(c)).

301. Subsection (12) means that exceptions may be made to the rules in this clause about how service of notice is to be effected – for example, in the case of where notices are to be served on inspectors where it would be inappropriate for them to be served at their home address.

Clause 85: Electronic delivery of notices etc.

302. This clause would permit the ONR to serve notices by means of electronic communications (such as by e-mail), provided the person who is to receive the notice has consented to this method of service (see subsection (2)). In order for that consent to be validly given, or willingness as it is described in the Bill, it needs to satisfy the conditions in subsection (3)(a), , (c) and (d), and it may be modified or withdrawn – see paragraph (e).

Clause 86: Crown application: Part 2

303. This clause covers the application of the Crown to Part 2 of the Bill. Part 2 will apply to the Crown subject to certain exceptions which are listed in subsection (3). In addition, the Secretary of State can, by order, exempt the Crown from any of the provisions that would otherwise bind it (see subsection (5).

Clause 87: Interpretation of this Part

304. This clause sets out definitions for various terms used in Part 2 of the Bill.

Clause 88: Subordinate legislation under this Part

305. Any orders and regulations made under Part 2 (including its Schedules) will need to be made by statutory instrument (subsection (1))**.** As a general rule such orders and regulations will come into force subject to annulment by either House of Parliament (see subsection (4)). One exception to that rule is orders under paragraph 26(5) of Schedule 5 to raise the limit of how much the ONR may borrow (see subsection (3) of this clause). Such orders must be approved by the House of Commons.

306. Another exception is to be found in subsection (2) – nuclear regulations need to be approved by both Houses of Parliament if they amend any provision of the Nuclear Installations Act 1965. The final exception is the power in clause 83(5) to make provision affecting Crown application. No procedure is applicable in this case.

Clause 89: Transitional provision etc

307. This clause allows for the Secretary of State to make by order provisions for transitional arrangements which appear to him to be appropriate in consequence or in connection with this Part. Specifically they can include amending legislation passed before the end of the session in which this Act is passed.

Clause 90: Transfer of staff etc

308. This clause introduces Schedule 8 which makes provision for the Secretary of State to, by order, make schemes transferring staff and property from the HSE to the ONR and property from the Secretary of State to the ONR.

309. Part 2 of Schedule 8 provides the Secretary of State with the power to make "staff transfer schemes". That is to say schemes to transfer staff into the ONR who are employees of the Health and Safety Executive and have been assigned to work in the interim ONR (see paragraphs 3 and 4 of the Schedule).

310. Paragraphs 5 to 10 set out matters that a staff transfer scheme may cover. For example, provision may be made about how pension entitlement is to be

carried over and how transferring staffs' continuity of employment is to be treated for the purposes of employment legislation (see paragraph 5(2)(b) to (d)).

311. Part 3 of Schedule 8 provides the Secretary of State with the power to make schemes transferring property, rights and liabilities from the HSE or the Secretary of State to the ONR. All transfers of this type will be associated with the functions that the ONR will carry out in future. The property transfer scheme may include provision in respect of the continuity of legal proceedings, to apportion rights and liabilities and to transfer property rights or liabilities that could not otherwise be transferred or assigned. No provision can be made in such a scheme in connection with rights or liabilities arising under or in connection with contracts of employment.

312. The HSE may make proposals to the Secretary of State concerning the making of property transfer schemes.

Clause 91: Minor and consequential amendments

313. Schedule 9, to which subsection (1) gives effect, contains a number of minor and consequential amendments to various Acts. In addition, subsection (2) of this clause confers a power on the Secretary of State to, by order, make further consequential amendments to legislation in consequence of Part 2 of the Bill.

314. Part 1 of Schedule 9 makes various amendments to the Health and Safety at Work etc. Act 1974 which are consequential on functions in respect of nuclear safety, security, safeguards and transport of radioactive materials being carried out in future by the ONR and not HSE.

315. This part of the Schedule also amends Section 18 of the Health and Safety at Work etc Act 1974 to make the ONR responsible for the enforcement of any of the relevant statutory provisions of that Act in relation to licensed nuclear sites. In addition, the amendments provide for ONR to be made an enforcing authority by means of regulations made under that Act. This will allow ONR to take responsibility for the enforcement of provisions of the 1974 Act at sites other than licensed nuclear sites. These sites could include, for example, the non-licensed, defence-related nuclear sites where ONR currently enforces certain statutory provisions of the 1974 Act on HSE's behalf.

316. In addition, the Schedule makes amendments to Schedule 2 to the 1974 Act to enable the appointment of an ONR member of the Health and Safety Executive– just as paragraph 2(3) of Schedule 5 enables the Executive to appoint a member of the ONR.

317. Part 2 of the Schedule makes consequential amendments to other legislation. In particular, the Nuclear Installations Act 1965 is amended to transfer the nuclear safety functions under that Act from the HSE to the ONR.

Clause 92: Application of Part 2

318. This clause sets out that Her Majesty may, by Order in Council, extend the application of Part 2 of this Bill (with or without modification) outside the United Kingdom. The power gives flexibility to amend the application of Part 2 to ensure that the provisions of this Part apply to persons, premises, activities, articles, substance or other matters outside the UK just as they would if they were within the UK.

PART 3: GOVERNMENT PIPE-LINE AND STORAGE SYSTEM

Summary and Background

319. The Government Pipe-line and Storage System consists of around 2,500 kilometres of cross-country pipelines of differing diameters, together with storage depots, associated pumping stations, receipt and delivery facilities and other ancillary equipment. The system receives, stores, transports and delivers light oil petroleum products for military and civil users. In peacetime the military use amounts to only around 10% of the current throughput and 30% of the storage capacity of the system. It distributes 40% of aviation fuel within the United Kingdom.

320. The powers under which the system was constructed and under which rights were acquired in relation to it were many and various. Elements of the system were constructed on or under what was, or remains, publicly owned or acquired land. Much of the system, however, was constructed on or under private land. Some elements of the system were constructed on or under private land under statutory powers. Other elements were built by agreement with the landowner at the time.

321. Part 3 makes provision relating to the government pipe-line and storage system, in particular: the rights of the Secretary of State in relation to that system; registration of those rights; compensation in respect of the creation of new rights or the exercise of rights; that the rights may be transferred; and, the application of the Pipe-lines Act 1962 (c.58) to the system.

Commentary on Clauses

Clause 93: Meaning of "government pipe-line and storage system"

322. This clause defines, for the purposes of Part 3, what the term "the government pipe-line and storage system" means.

Clause 94: Rights in relation to the government pipe-line and storage system

323. This clause provides that the Secretary of State may maintain and use the government pipe-line and storage system, or any part of it, for any purpose for which it is suitable.

324. It also provides that the Secretary of State may inspect or survey the system or any land on or under which it is situated and may remove, replace or renew the system or any part of it. If the system, or any part of it, is removed or abandoned, he may restore the land.

Clause 95: Right of entry

325. This clause provides that for the purpose of exercising a right conferred by clause 94, the Secretary of State may enter any land on or under which the government pipe-line and storage system is situated or any land held with that land ("the system land").

326. Subsections (3) and (4) provide that if the owner or occupier of the system land is entitled to exercise a right to pass over other land ("the access land"), the Secretary of State may exercise a corresponding right of access over that land for the purpose of accessing the system land.

327. Except in an emergency, the rights may be exercised only at a reasonable time and with the consent of the occupier of the land or under the authority of a warrant.

328. The rights do not include a right to enter dwellings.

Clause 96: Warrants for the purposes of section 95

329. This clause provides for the issue of a warrant to authorise entry on to land in the exercise of a right conferred by clause 95, if necessary using reasonable force.

330. A justice of the peace (or a sheriff in Scotland) may issue a warrant if satisfied that: at least seven days' notice has been given to the occupier of the land, the occupier cannot be found, or urgent action is required to prevent or limit serious damage to health or the environment; entry to the land has been or is likely to be refused (except where the occupier cannot be found); and, there are reasonable grounds for exercising the right.

331. It is an offence to intentionally obstruct the exercise of such a warrant and a person guilty of that offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Clause 97: Registration of rights

332. This clause provides that the rights conferred by clauses 94 (rights in relation to the government pipe-line and storage system), 95 (right of entry) and 99(1) (right to transfer the government pipe-line and storage system) are not subject to any enactment requiring the registration or recording of interests in, charges over or other obligations affecting land but that they bind any person who is at any time the owner or occupier of the land.

333. However, subsections (3) and (5) provide that in England and Wales such rights are local land charges, and it will be the duty of the Secretary of State to apply for their registration and in Scotland the rights may be registered in the Land Register of Scotland or recorded in the Register of Sasines.

Clause 98: Compensation

334. Subsection (1) provides that the Secretary of State must pay compensation to a person who proves that the value of a relevant interest in land to which that person is entitled is depreciated by the creation of rights by clauses 94 (rights in relation to the government pipe-line and storage system), 95 (right of entry) and 99 (right to transfer the government pipe-line and storage system).

335. Subsection (2) defines "relevant interest".

336. Subsection (3) provides that the amount of compensation is equal to the amount of the depreciation.

337. Subsection (4) provides that if a person proves loss by reason of damage to, or disturbance in the enjoyment of, any land or certain property as a result of the exercise of any right conferred by clause 94 (rights in relation to the government pipe-line and storage system) or 95 (right of entry), the person on whose behalf the right was exercised must pay compensation in respect of that loss.

338. Subsection (5) provides that any dispute about entitlement to, or amount of, compensation is to be determined by the Upper Tribunal or, in Scotland, the Lands Tribunal for Scotland.

Clause 99: Right to transfer the government pipe-line and storage system

339. This clause provides that the Secretary of State may sell, lease or transfer the government pipe-line and storage system or any part of it and transfer any

right or liability relating to the system or any part of it, subject to such conditions, if any, as he considers appropriate.

Clause 100: Application of the Pipe-lines Act 1962

340. This clause modifies the application of certain provisions of the Pipe-lines Act 1962 (c. 58) to the government pipe-line and storage system.

341. Subsection (3) only modifies the application of section 10 (provisions for securing that a pipe-line is so used as to reduce the necessity for construction of others) and section 36 (notification of abandonment, cesser of use and resumption of use of pipe-lines or lengths thereof) of the 1962 Act to any part of the system which is for the time being owned otherwise than by the Secretary of State.

342. Subsection (4) modifies section 40(2) of the 1962 Act (application of the electronic communications code).

343. Subsection (5) defines "GPSS works" for the purposes of subsection (4).

344. Subsection (6) modifies the effect of subsection (3) of section 45 of the 1962 Act (obligation to restore agricultural land) to the extent that anything done under or by virtue of Part 3 constitutes the execution of pipe-line works for the purposes of section 45.

Clause 101: Rights apart from this Part

345. Subsection (1) provides that nothing in Part 3 affects any other rights of the Secretary of State in relation to the government pipe-line and storage system.

346. Subsection (2) provides that the creation of rights to maintain and use, remove, replace or renew the government pipe-line and storage system or restore any land (clause 94, of entry (clause 95) and to transfer the system (clause 99), is not reliant on whether a corresponding right was exercisable by the Secretary of State before the coming into force of the clause.

Clause 102: Repeals

347. This clause repeals sections 12 (permanent power to maintain government oil pipe-lines), 13 (compensation in respect of government oil pipe-lines), 14 (registration of rights as to government oil pipe-lines) and 15 (supplementary provisions as to government oil pipe-lines) of the Requisitioned Land and War Works Act 1948 (c. 17) and section 12 of the Land Powers (Defence) Act 1958 (c. 30) (extension of provisions of Requisitioned Land and War Works Acts).

Clause 103: Power to dissolve the Oil and Pipelines Agency by order

348. The Oil and Pipelines Agency is a statutory corporation set up for the purposes of exercising and performing functions assigned to it by the Oil and Pipelines Act 1985 (c.62). The primary function of the Agency is the management of the government pipe-line and storage system.

349. Because clause 99 provides that the Secretary of State may sell, lease or transfer the government pipe-line and storage system or any part of it, subsection (1) provides that the Secretary of State may, by order, repeal the Oil and Pipelines Act 1985 and dissolve the Oil and Pipelines Agency.

350. Subsection (2) provides that if the Agency is dissolved under subsection (1), the Secretary of State may by order make a scheme for the transfer to the Secretary of State of property, rights and liabilities (a "transfer scheme").

351. Subsection (3) provides that the Schedule makes further provision about such a transfer scheme.

352. Paragraph 1 of Schedule 13 makes further provision for what the things that may be transferred under a transfer scheme include. Paragraph 2 provides that a transfer scheme may make consequential, supplementary, incidental or transitional provision. Paragraph 3 makes provision in relation to the modification of a transfer scheme.

Clause 104: Crown application: Part 3

353. This provides that Part 3 binds the Crown.

PART 4: MISCELLANEOUS AND GENERAL

Offshore Transmission

Summary and Background

354. Developers constructing an offshore generating station have the choice of also constructing the offshore transmission assets for the purposes of connecting the electricity generated to the onshore grid, before transferring the assets to an Offshore Transmission Owner (OFTO) appointed through a competitive tender process (the generator build model). Section 4(1)(b) of the Electricity Act 1989 prohibits the transmission of electricity to any premises without a licence. Section [102] amends section 4 in respect of specific transmission activities to exclude offshore transmission during a commissioning period in certain circumstances.

Commentary on Clauses

Clause 105: Offshore transmission systems

355. This clause amends section 4 of the Electricity Act 1989 to create an exception to the prohibition of participating in the transmission of electricity without a licence for a person who participates in offshore transmission activity during a commissioning period in certain circumstances.

356. Subsection (2) of the draft clause makes section 4(3A) of the Electricity Act 1989 subject to a new section 6F which is inserted by subsection (3).

357. Subsection (1) of new section 6F sets out that a person is not to be regarded as participating in the transmission of electricity for the purposes of Part 1 of the Electricity Act 1989 where four conditions are met. Subsections (2) to (5) of new section 6F set out these four conditions which must be met if the prohibition in section 4 is not to apply. Subsection (6) of new section 6F sets out that a person can still benefit from the exception even if they are not the person who meets the fourth condition. Subsections (7) to (11) define particular concepts which are described throughout the new section 6F.

General

Clause 106: review of Parts 1 and 2

358. This clause provides for the Secretary of State to carry out reviews of Chapters 1, 3, 4, 5 and 6 of Part 1 of the Bill and of Part 2 of the Bill, and to publish the conclusions of the review in a report to be laid before Parliament. The matters that must be covered by the report are set out in subsection (2).

Clause 107: Extent

359. This clause sets out the territorial extent of the provisions in the Bill. All provisions in the Bill extend to England and Wales, and Scotland.

360. Chapter 7 of Part 1 (emissions performance standard) and parts of Part 2 (nuclear regulation) also extend to Northern Ireland, as set out in subsections (2) to (4).

Clause 108: Commencement

361. This clause sets out the commencement dates for the provisions in the Bill. Subsection (1) provides for provisions other than those listed in subsections (2) and (3) to come into force, by order, on a day appointed by Secretary of State. Subsection (4) provides that an order made by the Secretary of State

under subsection (1) may appoint different days for different purposes and make transitional provisions and savings.

362. Subsection (2) provides that the following provisions will come into force two months after the Bill receives Royal Assent:
- Chapter 1 of Part 1 (contracts for difference);
- Chapter 2 of Part 1 (investment instruments);
- Chapter 4 of Part 1 (conflicts of interest);
- Chapter 5 of Part 1 (contingency arrangements);
- Chapter 6 of Part 1 (renewables obligation: transitional arrangements);
- Chapter 7 of Part 1 (emissions performance standard);
- Chapter 8 of Part 1 (strategy and policy statement), other than section 47(1)(repeals); and
- section [105] (offshore transmission systems).

363. Under subsection (3), clauses 106 to 109 (general) will come into force on the day the Bill receives Royal Assent.

Clause 109: Short title

364. This clause confirms what the title of the Act would be when Royal Assent is given.

SCHEDULES

Schedule 1: Transfer schemes in connection with orders under section 34

365. This Schedule confers a power on the Secretary of State to transfer property, rights and liabilities, by transfer scheme, when he exercises his power to transfer EMR delivery functions under clause 34. This will enable the transfer of functions to operate effectively in practice.

366. Paragraph 1 sets out the power to make one or more transfer schemes. The transfer schemes would list the property, rights and liabilities being transferred, and state the date on which the transfer is to take place. Transfer schemes are not subject to any Parliamentary procedure. Paragraph 2 sets out the full scope of the transfer power. Paragraph 3 gives the Secretary of State the power to pay compensation to persons whose interests are adversely affected by a transfer.

Schedule 2: The renewables obligation: certificate purchase scheme

367. This schedule makes amendments to s.32B to 32M of the Electricity Act 1989 to set out further provision that may be made by the Secretary of State in a certificate purchase order. In most cases, the provisions are modelled on the

existing powers of the Secretary of State to make a renewables obligation order, but with modifications to reflect the different features of the certificate purchase scheme.

368. Paragraph 4 inserts s.32CA into the Electricity Act 1989. Subsection (1) enables a certificate purchase order to impose restrictions on the transfer of fixed price certificates. Subsection (3) enables an order to provide for sums to be repaid to the Authority if the purchasing body has purchased a certificate that should not have been issued, and if it is not possible to refuse the issue of another certificate in its place.

Schedule 3: Emissions limit duty: regulations

Part 1: Application and modification of emissions limit duty

369. Paragraph 1 allows the Secretary of State, when making regulations under clause 36(5)(b), to bring plant that already have a relevant consent into the regime where they replace a main boiler or install an additional main boiler. It also allows regulations to apply to different parts of the plant – for example, it allows provisions to only apply to the extended capacity or to the capacity of the replacement boiler.

370. Paragraph 3 allows the Secretary of State, when making regulations under clause 36(5)(b), to apply the emissions limit to a CCS plant where it is serving more than one generating station – for example, a unit converting coal to hydrogen (and emitting carbon dioxide) for use in separate generating stations.

371. Paragraph 4 allows the Secretary of State, when making regulations under clause 36(5)(b), to provide different limits to plant which enters, or ends, commercial operation part way through a calendar year.

Part 2: Enforcement

372. Part 2 of this Schedule details the measures that may be included in the regulations made under clause 36(5)(c) about monitoring and enforcement of compliance with the emissions limit.

373. Paragraph 5 details the matters that can be dealt with in the enforcement regulations. Among other things, they are able to: specify which organisation will be responsible for monitoring and enforcing the emissions limit (the enforcement authority); make provision for publication of information on compliance with the emissions limit; authorise the Secretary of State to set up a charging regime; provide for enforcement of the duty through enforcement notices; and confer a right of appeal against decisions made by the enforcing body.

374. The Secretary of State is also given the power to include in regulations a requirement that the enforcing authority to comply with directions given by the Secretary of State, which may include directions not to enforce the requirement in security of supply emergencies (paragraph 5(1)(c)).

375. The regulations can enable the enforcement authority to serve a notice in relation to the previous year or the same year requiring the operator to take remedial action or pay financial penalties or modifying the subsequent year's emissions limit (paragraph 6).

For Schedules 4-11 (Nuclear regulations) see notes to Part 2 Clauses above

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FINANCIAL EFFECTS

376. The EMR measures which support low carbon investment (investment instruments CFD, FiDs) and ensure sufficient reliable capacity is available to cover peak demand (Capacity Market) are treated as tax and spend and will have implications on the public finances. In relation to the RO transition, the cost of purchasing fixed price certificates is intended to be funded wholly or partly by a levy on electricity suppliers. Suppliers are likely to pass on the cost of the levy to consumers through their energy bills. The cost of the RO is expected to rise before 2020 before reducing by 2030. For the EPS proposal, this is a regulatory measure, and doesn't have any significant public finance implications beyond some set-up and on-going administration costs. The accompanying IAs on these measures provide further details of the impacts.

377. The creation of the Statutory ONR is a regulatory measure and is not expected to materially impact on the public finances. The interim ONR currently recovers around 95 per cent of its costs from businesses in the nuclear industry. This proportion is expected to continue and the intention would be to increase it to as close as possible to 100%. Any amounts not recovered in fees and charges will be supplemented by grant-in-aid from the Government to cover the remaining statutory ONR related costs, as such any impacts are not expected to be materially significant.

378. The Ofgem review proposal is a regulatory measure and is also not expected to have any impacts on the public finances.

PUBLIC SECTOR MANPOWER

379. The impact assessments have identified, where applicable, any impacts on the public sector. As a result of the primary powers being taken there is expected to only be small resource implications in relation to the EPS and ONR proposals as mentioned in the previous section.

SUMMARY OF THE IMPACT ASSESSMENT

380. The Energy Bill is legislating for multiple policy objectives and therefore brings forward a number of different measures. All of the policy proposals where costs and benefits have been identified have an individual Impact Assessment (IA) which discusses the options, rationale and costs and benefits in detail. Impact Assessments are also summarised in an overarching summary statement for the Bill as a whole.

381. The table below provides a summary of the policies included in the Energy Bill together with the rationale for the policy intervention.

Policy Measure	Rationale for intervention
Electricity Market Reform (EMR): In Planning our electric future: A White Paper for secure, affordable and low-carbon electricity (July 2011), the Government announced its intention to legislate for key elements of the EMR package in the second session. This will ensure future electricity generation is affordable, secure, diverse and consistent with the UK's obligations to reduce carbon emissions and increase the use of renewables. Further details of the EMR policies are given in Table 2.	The current electricity market arrangements are not likely to deliver the required scale or pace of investment in low-carbon generation whilst ensuring adequate security of electricity supply and affordability to consumers due to: • Cost characteristics of low-carbon capacity (high capital cost and low operating cost) means that it faces greater exposure to wholesale price risk than conventional fossil fuel capacity, which has a natural hedge given its price setting role. • Carbon price being too low and its future level too uncertain to mitigate the risks associated with low-carbon investment. • Market imperfections posing risks to future levels of electricity security of supply. These effects are likely to be exacerbated when there are significant amounts of low-carbon intermittent generation.

Ofgem Review: As set out in the Ofgem Review Final Report, the Government intends to strengthen the current regulatory framework by bringing greater clarity and coherence to the roles of both Government and the regulator. To achieve this, the Government proposes to establish a new statutory 'Strategy and Policy Statement'. This Statement will set out the Government's policy goals for the gas and electricity markets, describe the roles and responsibilities of Government, Ofgem, and other relevant bodies, and define policy outcomes that Government considers Ofgem to have a particularly important role in delivering.	The context in which the Gas and Electricity Markets Authority (GEMA), and its executive arm Ofgem, works has changed significantly since economic regulation was established in the 1980s. The role of the regulator is now much more complex than originally envisaged, with an important contribution to make to Government's wider policy goals for the energy sector such as climate change objectives. One consequence is that a lack of clarity over the respective roles of GEMA and Government has developed, which is causing regulatory uncertainty. There is a need to clarify these roles and provide confidence that there will be coherence between Government policy and regulation.
Office for Nuclear Regulation: The Government intends to bring forward legislation to create a new independent statutory body outside of the Health & Safety Executive (HSE) to regulate the nuclear power industry. The new statutory corporation would be known as the Office for Nuclear Regulation (ONR) and would take on the relevant functions carried out by the HSE and the Department for Transport. The ONR would be a new independent regulator, formally responsible in law for delivering its regulatory functions. The creation of the ONR would consolidate civil nuclear and radioactive transport safety and security regulation in one place.	The UK's nuclear regulator needs to be effective, independent, fully resourced, transparent and accountable. It must also be sufficiently flexible to meet future challenges in an industry that deals in long timescales. The current nuclear regulator (the interim Office for Nuclear Regulation (**ONR**), an agency of the HSE) does not adequately meet these requirements due to certain inherent constraints. Such issues can only be resolved using legislative means.
Government Pipeline and Storage System (GPSS): A proposal which will allow the sale of MoD-held assets that pump aviation fuel to UK and US airbases, as well as civilian airports.	The GPSS provides aviation fuel for both military bases and commercial airports in the UK. MoD has previously reviewed the pipeline and concluded that it does not need to be owned by Government. There are currently restrictions on developing the system for greater commercial usage unless there is an underlying defence requirement. Legislation is required before the GPSS can be sold.
Offshore transmission systems: An amendment to provide an exception to the prohibition of participating in the transmission of electricity without a licence for a person who participates in offshore transmission during a commissioning period in certain circumstances.	Developers constructing offshore generating stations have the choice of also constructing the offshore transmission assets, to connect the electricity to the onshore grid, before transferring the assets to an Offshore Transmission Owner to own and operate them. The proposal is crucial to ensure that UK offshore developers can test and commission this infrastructure to export power without committing a criminal offence.

382. The Regulatory Policy Committee (RPC) has had an opportunity to comment on the IAs where policies are regulatory in nature, and the final IAs reflect their comments. The Impact Assessments accompanying the Bill have also been signed by the Secretary of State signifying that he has read them and is satisfied that they represent a fair and reasonable view of the expected costs, benefits and impacts of the policies, and that the benefits justify the costs.

383. The diverse nature of the provisions included in the Bill and the complexities and challenges of meaningfully monetising the different costs and benefits associated with the multiple objectives of energy policy, mean that it is not possible to present a single cost-benefit figure for the Bill. The individual IA's for the majority of proposals, where quantifiable, show there is an overall net benefit to society.

384. As part of the Impact Assessment process we have also applied 'One-In, One-Out' methodology (OIOO) to identify any new net costs to business from regulatory measures included in the Bill. For the majority of policies the individual IAs show that these are out of scope of OIOO. Only the EPS measures is within scope and the EPS "In" will be validated and the Department will aim to provide an offsetting "Out" to comply with One-in, One-out policy at secondary legislation stage when the details of the administrative regime will be decided.

385. Full Impact Assessments are available on the DECC website here: http://www.decc.gov.uk/en/content/cms/legislation/energybill2012/energybill2012.aspx.

COMPATIBILITY WITH THE EUROPEAN CONVENTION OF HUMAN RIGHTS

386. The Department recognises that some of the clauses could engage rights under the European Convention on Human Rights (ECHR), in particular Article 1 of the First Protocol (A1P1) (the right to peaceful enjoyment of possessions), Article 8 of the ECHR (the right to respect for family and private life, home and correspondence) and Article 6 of the ECHR (the right to a fair trial).

387. Rights under A1P1 may be engaged by certain measures that form part of the electricity market reform (EMR), for example the exercise of the Secretary of State's powers to issue Contracts for Difference and investment instruments and to modify licences for the generation, supply and transmission of electricity in order to oblige licence holders to play particular roles in the administration and implementation of the EMR.

388. However, rights under A1P1 are qualified and do not prevent a state enforcing such laws as it deems necessary to control the use of property in the general interest. The Department considers that, in so far as A1P1 is engaged by these clauses, they are compatible (or confer powers that are capable of being exercised compatibly) with it, because they are pursuant to the general interest in the EMR and its aims, and are proportionate to those aims.

389. The Government is also of the view that measures in Part 3 of the Bill (Government Pipe-line and Storage System) may in some cases amount to an interference with the right protected by A1P1. This interference is, however, justified in the general interest and, in light of the provisions on compensation, strikes a fair balance between that general interest and the rights of individuals.

390. Measures in the Bill may also engage rights under Article 8. The Bill contains several requirements on electricity suppliers and generators to provide information and, in particular, Part 2 (nuclear regulation) will confer powers on the ONR to obtain information, and will also provide a comprehensive set of powers for nuclear inspectors, including powers to enter premises and to require the provision of information. Article 8 is a qualified right and we consider that all the provisions in the Bill that engage it are justified and proportionate. The information gathering and inspection powers contained in the Bill are subject to appropriate safeguards and are necessary in the interests of ensuring the proper functioning of the various elements of the EMR, and of ensuring safety and security.

391. Measures in the Bill also engage Article 6, for example the power of nuclear inspectors to issue enforcement and prohibition notices (Part 2 and Schedule 6) and the power of the Secretary of State to make licence and code modifications to introduce business separation and ring-fencing measures in relation to the System Operator (Part 1, Chapter 4). Where appropriate, provision has been made for final determinations to be made by the courts and by independent tribunals. Where this has not been provided for, we consider that Judicial Review will be sufficient to ensure compliance with Article 6, since the decisions in question will involve the exercise of administrative discretion based on complex policy considerations and technical knowledge.

392. In the Department's view all of the provisions of the Bill which give rise to human rights issues strike a fair balance between the qualified rights of the individual whose right is affected and those encompassed within the general interest. Accordingly, the Department is satisfied that the provisions of the Bill are compatible with the European Convention on Human Rights.

COMMENCEMENT DATE

393. Chapters 1, 2, and 4 to 8 (except clause 47(1)(repeals)) of Part 1, and clause 105 will commence two months after Royal Assent. Chapter 3 of Part 1, clause 47(1), Part 2 and Part 3 of the Bill will be commenced by order on a day appointed by Secretary of State. An order may appoint different days for different purposes or make transitional provision and savings. The general provisions in clauses 106 to 109 will come into force on the day on which the Bill receives Royal Assent.

Section 6:

Summary Impact Assessment

Section 1: Introduction

Energy is essential in almost every aspect of our lives and is fundamental to the success of our economy. The Annual Energy Statement, published in November 2011, set out the Government's plan to support the transition to a secure, safe, affordable and low-carbon energy system, and mobilise commitment to ambitious action on climate change, internationally.

The Government is committed to achieving its climate change and renewables targets, including a 34 per cent reduction in its CO_2 emissions by 2020 (relative to 1990); at least an 80 per cent reduction by 2050; and ensuring that by 2020, 15 per cent of the energy consumed in the United Kingdom comes from renewable sources.

Moving to a secure, more efficient, low-carbon energy system in a cost-effective way is extremely challenging, but is achievable. It will require major investment in modern technologies: to renovate our buildings; to provide for the electrification of much of our heating, industry and transport; and to move to cleaner power generation. It will also require major changes in the way energy is used by individuals, by industry, and by the public sector.

Through this Energy Bill, the Government aims to further its objectives to meet the UK's decarbonisation and renewable targets, at least cost to consumers. The Government aims to ensure continued secure energy supplies whilst creating the right conditions for markets and private investment, through greater regulatory certainty and clarity. It will do this through its programme of Electricity Market Reform (EMR); through strengthening the regulatory framework by further clarifying the role of the regulator, Ofgem; and through establishing an Office for Nuclear Regulation (ONR). In addition, the Bill makes provisions ensuring developers of offshore generating stations can test and commission offshore transmission infrastructure to export power without committing a criminal offence, before transferring the infrastructure to an offshore transmission owner. Finally, the Bill makes provisions for a measure to enable the sale of Ministry of Defence (MOD) held assets, which pump aviation fuel to United Kingdom and United States airbases as well as some civilian airports - the Government Pipeline and Storage System (GPSS).

Section 2: Policy Proposals

The Energy Bill is legislating for multiple policy objectives and therefore brings forward a number of different measures. All of the policy proposals where costs and benefits have been identified have an individual Impact Assessment (IA) which discusses the options, rationale and costs and benefits in detail. A summary of the IAs are presented in Section 3 below and the detailed individual IAs accompany this document.

The table below provides a summary of the policies included in the Energy Bill together with the rationale for the policy intervention.

Table 1: Policy summaries and rationale

Policy Measure	Rationale for intervention
Electricity Market Reform (EMR): In Planning our electric future: A White Paper for secure, affordable and low-carbon electricity (July 2011), the Government announced its intention to legislate for key elements of the EMR package in the second session. This will ensure future electricity generation is affordable, secure, diverse and consistent with the UK's obligations to reduce carbon emissions and increase the use of renewables. Further details of the EMR policies are given in Table 2.	The current electricity market arrangements are not likely to deliver the required scale or pace of investment in low-carbon generation whilst ensuring adequate security of electricity supply and affordability to consumers due to: • Cost characteristics of low-carbon capacity (high capital cost and low operating cost) means that it faces greater exposure to wholesale price risk than conventional fossil fuel capacity, which has a natural hedge given its price setting role. • Carbon price being too low and its future level too uncertain to mitigate the risks associated with low-carbon investment. • Market imperfections posing risks to future levels of electricity security of supply. These effects are likely to be exacerbated when there are significant

	amounts of low-carbon intermittent generation.
Ofgem Review: As set out in the Ofgem Review Final Report, the Government intends to strengthen the current regulatory framework by bringing greater clarity and coherence to the roles of both Government and the regulator. To achieve this, the Government proposes to establish a new statutory 'Strategy and Policy Statement'. This Statement will set out the Government's policy goals for the gas and electricity markets, describe the roles and responsibilities of Government, Ofgem and other relevant bodies, and define policy outcomes that Government considers Ofgem to have a particularly important role in delivering.	The context in which the Gas and Electricity Markets Authority (GEMA), and its executive arm Ofgem, works has changed significantly since economic regulation was established in the 1980s. The role of the regulator is now much more complex than originally envisaged, with an important contribution to make to Government's wider policy goals for the energy sector such as climate change objectives. One consequence is that a lack of clarity over the respective roles of GEMA and Government has developed, which is causing regulatory uncertainty. There is a need to clarify these roles and provide confidence that there will be coherence between Government policy and regulation.
Office for Nuclear Regulation: The Government intends to bring forward legislation to create a new independent statutory body outside of the Health & Safety Executive (HSE) to regulate the nuclear power industry. The new statutory corporation would be known as the Office for Nuclear Regulation (ONR) and would take on the relevant functions carried out by the HSE and the Department for Transport. The ONR would be a new independent regulator, formally responsible in law for delivering its regulatory functions. The creation of the ONR would consolidate civil nuclear and radioactive transport safety and security	The UK's nuclear regulator needs to be effective, independent, fully resourced, transparent and accountable. It must also be sufficiently flexible to meet future challenges in an industry that deals in long timescales. The current nuclear regulator (the interim Office for Nuclear Regulation (ONR), an agency of the HSE) does not adequately meet these requirements due to certain inherent constraints. Such issues can only be resolved using legislative means.

regulation in one place.	
Government Pipeline and Storage System (GPSS): A proposal which will allow the sale of MoD-held assets that pump aviation fuel to UK and US airbases, as well as civilian airports.	The GPSS provides aviation fuel for both military bases and commercial airports in the UK. MoD has previously reviewed the pipeline and concluded that it does not need to be owned by Government. Legislation is required before the GPSS can be sold.
Offshore transmission systems: An amendment to provide an exception to the prohibition of participating in the transmission of electricity during testing of offshore transmission connections.	Developers constructing offshore generating stations have the choice of also constructing the offshore transmission assets, to connect the electricity to the onshore grid, before transferring the assets to an Offshore Transmission Owner to own and operate them. The proposal is crucial to ensure that UK offshore grid developers can build and test this infrastructure to export power without committing a criminal offence.

The Regulatory Policy Committee (RPC) has had an opportunity to comment on the IAs where policies are regulatory in nature, and the final IAs reflect their comments.

Section 3: Summary of Impacts From Policies

3.1.1 EMR measures

The EMR provisions in the Bill establish a framework for delivering secure, affordable and low-carbon electricity. Powers are needed so that we can offer reliable long-term contracts for low-carbon energy and capacity, administered through delivery arrangements that are trusted by investors, to achieve the diverse portfolio of generation that is needed to meet our security of supply and decarbonisation goals. We will do this as efficiently and cost-effectively as possible and take steps to ensure we limit carbon dioxide emissions from new fossil fuel

power stations. The proposed policy measures in the Bill relate to aspects of the EMR outlined in Table 2.

Table 2: Summary of EMR policies

EMR Policy	Key Decision Documents	Key conclusion from Impact Assessment
Feed-in Tariff with Contracts for Difference (CfD)	EMR White Paper: *Planning our electric future: a White Paper for secure, affordable and low-carbon electricity (July 2011)*; and accompanying Impact Assessment	CfD is preferred option: Provides stable returns whilst maintaining market incentives and minimising costs to consumers.
Capacity Market	Technical update to EMR White paper: *Planning our electric future, a technical update (December 2011)*	Capacity Market is the preferred option, ensuring adequate reliable capacity and most likely to be cost efficient.
Emissions Performance Standard (EPS) 450g/kWh with grandfathering of the level until 2045 after which the policy comes to an end.	EMR White Paper: *Planning our electric future: a White Paper for secure, affordable and low-carbon electricity (July 2011);* Energy Bill 2012 and accompanying EPS Impact Assessments	EPS to act as a regulatory backstop, supporting decarbonisation. Grandfathering provisions give the flexibility to Government to take action to drive down emissions with an EPS to help meet the 2050 emissions target if needed.

Investment Instruments	EMR White Paper: *Planning our electric future: a White Paper for secure, affordable and low-carbon electricity (July 2011);* Energy Bill 2012	Our analysis shows that enabling early investment decisions delivers a more socially optimal generation mix out to 2030, both in terms of generation capacity, and in terms of capacity utilisation. The recommended preferred option is to issue early CfDs with price and contract terms conditional on any necessary state aid approvals being secured. This gives as much certainty as possible to low carbon investors who are ready to make a final investment decision before EMR has been fully implemented.
Renewables Obligation Transition	EMR White Paper: *Planning our electric future: a White Paper for secure, affordable and low-carbon electricity (July 2011);* Energy Bill 2012	Moving to a fixed Renewables Obligation Certificate (ROC) system. To give generators certainty over the incentive they receive, reduce economic rents and give investors the long-term visibility to provide debt financing with a longer term.

3.1.2 Feed-in Tariff with Contracts for Difference (CfD)

Feed-in Tariff with Contracts for Difference (CfD) will provide long term support for all forms of low carbon generation. This will enable more investment to come forward sooner at a cheaper cost of capital. This will enable us to meet our decarbonisation goals while reducing consumer bills in the medium and longer term.

The CfD is a long term instrument set at a fixed level where variable payments are made to ensure the generator receives the agreed tariff (assuming they sell their electricity at the market price). The Feed-in Tariff (FiT) payment will be made in addition to the generator's revenues from selling electricity in the market. Generators will pay back the difference between the market price and the tariff if the market price is higher. The size of those payments depends on the 'strike price' and the 'reference price'. The strike price is the pre-agreed price level, which is deemed to make a particular low carbon plant economically viable; and which will enable a plant to cover its costs over its lifetime and make a reasonable return. A reference price is the wholesale market electricity price which is 'referenced' by the contract as the underlying value against which the CfD provides a top-up payment to generators.

The CfD should ensure affordability, minimise the cost for consumers, provide stable returns for investors, and maintain the market incentives to generate when electricity demand is high.

Further details on the Government's choice of CfD as the preferred policy instrument are contained in Section 3 of the EMR Impact Assessment which follows this document. In summary, the assessment considered two options for driving investment in low-carbon generation:

- A Premium Feed-in Tariff (PFiT), where all low-carbon generation receives a static premium payment on top of the wholesale electricity price;
- A Feed-in Tariff with Contracts for Difference (CfD) for all low-carbon generation, guaranteeing all low-carbon generation a strike price for the electricity they produce, settled against an indicator of the wholesale electricity price.

The preference for a CfD over a PFiT was based on the CfD's ability to promote static and dynamic efficiency through allocating risk efficiently between investors,

consumers and the Government. This is achieved by allocating risk to those parties best able to manage or control it. For example, the CfD insulates investors in low carbon generation from electricity price risk, which they are unable to control, but maintains exposure to a fluctuating wholesale price for those technologies that are able to respond to this signal in their operational decisions.

The Premium FiT and the CfD assign risks differently between generators and consumers, as a consequence of the proportion of revenue that that is uncertain. In this respect, the PFiT has a very similar effect to the Renewables Obligation (and they are considered the same for modelling purposes), but the CfD gives greater revenue certainty. This implies that:

- Cost of capital is lower under a CfD than under a Premium FiT. In the White Paper IA this is quantified: financing costs are expected to be lower by £2.5bn over the period to 2030 as a whole under a CfD than a Premium FiT.

- Power Purchase Agreements, under which generators currently forfeit some of the value of the electricity in order to be insulated against risk, including price risk, should become cheaper for generators in the future, making the CfD a more efficient support instrument. This cannot be quantified due to a lack of available data.

- Consumers are effectively committed to the decarbonisation targets by implicitly entering into a contract with generators.

Promoting efficiency and minimising costs to society has been the main principle in the detailed design of the CfD. For example, by using a year-ahead index for baseload technologies, generators have an incentive to carry out their maintenance when demand is low. Equally, using a day-ahead index for intermittent technologies means that risks are allocated efficiently: for example, wind generators have an incentive to forecast their output for the following day but do not face uncertainty about the longer-term impacts of large amounts of wind on the system.

3.1.3 Capacity Market

In the Electricity Market Reform White Paper the Government committed to introducing a capacity mechanism to ensure resource adequacy – that is, to ensure

there is sufficient reliable and diverse capacity to meet demand. It consulted on two options: a targeted mechanism in the form of a Strategic Reserve (a development of the lead option from the December 2010 Electricity Market Reform consultation document); and a market-wide mechanism in which all providers willing to offer reliable capacity are provided with incentives to do so. The EMR Technical Update (published in December 2011) formed the Government's response to that consultation, setting out a decision to implement a market-wide Capacity Market.

The objectives of a capacity mechanism are to ensure a sufficient level of reliable capacity, at minimal cost to consumers and to minimise any risk of unintended consequences arising from the introduction of the policy. The accompanying IA considers three options:

1. **Business As Usual (BAU):** No capacity mechanism is introduced
2. **Strategic Reserve**: A targeted capacity mechanism only deployed as generator of last resort
3. **Capacity Market**: A market-wide volume-setting mechanism

The IA models the impact of a Strategic Reserve and a Capacity Market against the "Business As Usual" counterfactual. This shows a negative impact of both capacity mechanisms. However this result is driven by two key assumptions in the modelling, namely that:

- there are no market failures in the electricity market in the BAU scenario. If there is "missing money," i.e. the perception that prices cannot rise to the value of lost load, then there will be a sub-optimal level of investment in capacity; and
- in the scenarios with a capacity mechanism, a security standard is set which delivers more capacity than is economically efficient within the modelling.

Table 3: Modelled Impacts of a capacity mechanism

	Strategic reserve	Capacity Market
Total Costs (£m, discounted to 2010)	1336	2882
Total Benefits (£m, discounted to 2010)	220	269
Change in Net Present Value (£m, discounted to 2010)	-1116	-2613

It should be noted that we plan to update our analysis of the capacity mechanism as part of the legislation. In any updated analysis, we will be testing the impact of varying the above assumptions. Given limitations in the modelling, we have therefore used criteria to qualitatively assess the options in detail in order to provide a robust case for our chosen capacity mechanism:

- Security of Supply: A Capacity Market is best able to deliver security of supply as it solves the "missing money" problem at source and is robust to a range of scenarios.
- Cost: A Capacity Market is theoretically most cost-efficient, though this is dependent on effective design of the mechanism to minimise gaming.
- Risk: A Strategic Reserve has lower design risk than a Capacity Market as it represents a smaller intervention in the market.

Given this assessment, a Capacity Market is the preferred option as it best ensures adequate reliable capacity and is most likely to be cost efficient, though it is recognised that this option does carry significant design risk.

3.1.4 Updated CfD and Capacity Market Analysis

Since the publication of the analysis in the EMR White Paper and accompanying IA, DECC has published updated assumptions on fossil fuel prices, technology costs and demand. In light of this the cost benefit analysis underpinning the EMR package with the CfD and Capacity Market has been revised. However, these changes in the underlying assumptions apply to all options equally, therefore the comparison

between CfD and PFiT remains unaltered. The latest cost-benefit analysis and bill impacts for the EMR CfD package are presented in the sections below.

3.1.4.1 Updated Cost- Benefit Analysis (CBA)

In undertaking the cost-benefit analysis for the EMR with CfD and Capacity Market, the policy package is compared to a baseline without the EMR package. The baseline includes existing policies such as the Renewables Obligation and policies which the Government has committed itself to delivering, such as the Carbon Price Floor policy announced in Budget 2011.

The package modelled includes a low-carbon instrument (the CfD) and a Capacity Market, combined with an Emissions Performance Standard. The Carbon Price Floor policy, as announced, is in the baseline/counterfactual against which the policy is assessed.

The modelling process set the package to reach an illustrative level of decarbonisation of the power sector by 2030 (emission sector intensity of 100gCO_2/kWh)[3]. Under the baseline it is not possible to meet this target; the baseline results in a carbon intensity of around 165g/kWh. This is due to the fact that without a CfD mechanism in place, less low carbon plant comes forward in the period to 2030.

As shown in table below, under the CfD with a Capacity Market, with central fossil fuel prices, net welfare compared to the baseline is improved by £229m in Net Present Value (NPV) terms. This benefit comes from a significant reduction in carbon costs as well as reductions in generation costs, mainly as a consequence of gas-fired generation being replaced by new nuclear in the 2020s. However, this additional nuclear build, combined with new Open Cycle Gas Turbine (OGCT) plant to ensure security of supply, leads to capital expenditure being higher than in the baseline. Some of this additional cost is offset by benefits to society from the Capacity Market, which ensures there is a lower risk to security of supply than in the

[3] 100gCO_2/kWhin 2030 is an indicative target level consistent with modelling for the EMR Consultation and subsequent White Paper and with the previous recommendation for the power sector from the Committee on Climate Change (CCC).The CCC had advised in June 2010 that to meet the UK's 2050 target required decarbonising to around 100g/KWh in 2030 (they later reduced that to 50g/KWh).

baseline (electricity demand not being met (also known as unserved energy) is lower than in the baseline).

Table 4: Net present value of EMR package to society in £m, relative to the baseline

Change in annual welfare (relative to Baseline)		NPV, £m (Real 2009)
Net Welfare	Carbon costs	6,537
	Generation costs	8,983
	Capital costs	-15,741
	Unserved energy	373
	Demand side response	77
	Change in Net Welfare	229

3.1.4.2 Impact on consumer bills, relative to the baseline

The impact on consumer bills shows the distributional implications of the policies. Final consumer electricity bills are made up of wholesale energy costs, network costs, metering and other supply costs, supplier margins, VAT and the support costs of energy and climate change policies. Wholesale electricity prices, and therefore bills, are also strongly influenced by the prevailing capacity margin in the wholesale electricity market.

3.1.4.2 (i) Bill impacts of the capacity mechanism

The bill impacts of the capacity mechanism have been assessed relative to a counterfactual (or baseline) which includes the CfD. As mentioned in section 3.1.3 the IA evaluates both a Strategic Reserve and a Capacity Market.

The energy system modelling suggests that the impact on the average annual electricity bill over the period 2010 – 2030 would be between a £1 increase (for a Strategic Reserve) or an £11 reduction (for a Capacity Market) compared to an average annual bill of £612 without a capacity mechanism. The impact would be

larger when looking at the years in which the mechanism is in operation, i.e. over the period 2024 – 2030. In this period, the impact is for an average £3 increase (for a Strategic Reserve) or a £33 decrease (for a Capacity Market) on an average annual bill of £679 without a capacity mechanism. The reason for this decrease in the modelling is because a Capacity Market limits the scope for generators to receive scarcity rents. However these figures are to be treated with caution, and impacts could be higher as a result of inefficient design resulting in overpayment for capacity or an inaccurate prediction of the capacity requirement resulting in unnecessary over-procurement.

The following table shows the bill impacts of the capacity mechanism options (the Strategic Reserve and the Capacity Market) compared to a world with current policies and a CfD in place, but no capacity mechanism.

Table 5: Bill impacts of the capacity mechanism, versus a baseline with CfD

	Typical bill for the Counterfactual	Change in Typical bill %	
		Strategic Reserve	Capacity Market
Domestic, (£)			
2011-2015	574	0.0%	0.0%
2016-2020	574	0.0%	0.0%
2021-2025	607	0.2%	-2.0%
2026-2030	693	0.5%	-4.8%
Non Domestic, (£000)			
2011-2015	1299	0.0%	0.0%
2016-2020	1464	0.0%	0.0%
2021-2025	1662	0.2%	-1.2%
2026-2030	1743	0.5%	-2.8%

3.1.4.2 (ii) Bill impacts of the EMR package (CfD with Capacity Market)

This section considers the bill impact of the CfD and Capacity Market when combining the policies into packages for reform[4]. This EMR package is assessed against a baseline which includes the Carbon Price Floor policy as announced at Budget 2011 and existing policies such as the Renewables Obligation (as undertaken for the CBA – see section 3.1.3.1).

The EMR policy package affects electricity bills in three main ways:

[4]The packages also includes the Emissions Performance Standard (EPS). However the EPS policy for the design and level at which the EPS should be introduced (as presented in the EMR White Paper) will not be binding on the low-carbon incentives or security of supply options assessed here.

- EMR support costs: CfD low-carbon payments and capacity payments which are assumed to be funded through electricity bills;

- lower RO support costs: less new generation will be covered by the Renewables Obligation, and

- wholesale price effect: resulting from changed generation mix and capacity margins

The direct EMR support costs would increase retail prices against the baseline as it is assumed that the support costs are passed on to consumers by suppliers. Nevertheless, the introduction of CfDs also leads to a reduction in the Renewables Obligation cost against the baseline because relatively fewer plant will receive RO payments.

The impact on wholesale prices relative to the baseline varies between years. In general, a decarbonised electricity system should result in a lower average wholesale price due to a higher proportion of capacity having a relatively low short run marginal cost.

The impact of the EMR package on domestic bills, relative to the baseline, is shown in Table 4 below under central DECC assumptions. The analysis shows that household electricity bills after the implementation of Electricity Market Reform are expected to be, on average, four per cent lower than they would have been without the reforms in place over the period up to 2030. Consumer bills will be significantly lower towards the later years as the proposals begin to take effect. Under central fossil fuel prices, average domestic consumer bills are expected to be around 15 per cent lower in the five-year period up to 2030 than they would be under current policies.

Table 6: Domestic Bill Impacts

Domestic (£)		
	Typical baseline bill	**Change in Typical bill %**
2011-2015	573	0%
2016-2020	561	2.4%
2021-2025	611	-0.7%
2026-2030	785	-14.8%
Average 2011-2030	633	-4.3

3.1.4.3 Competitiveness

EMR measures will affect the relative attractiveness of the UK for investment by overseas investors. The CfD, by giving greater revenue certainty, is designed to attract new sources of capital, in particular institutional investors, to the sector, the main benefit of which is that it will allow the debt capital provided by project finance lenders to be recycled into new investments.

The competiveness of UK industry is also affected by the impacts on business bills from the EMR measures. The bill reductions shown in Table 8 therefore could enhance the competiveness of UK business relative to the baseline case.

Table 7: Non-domestic Bill impacts

Non Domestic (£000)		
	Typical baseline bill	**Change in Typical bill %**
2011-2015	1297	0.1%
2016-2020	1431	2.5%
2021-2025	1666	0.8%
2026-2030	1951	-12.2%
Average 2011-2030	1586	-3.0%

3.1.4.4 Future updates to the EMR analysis

The analysis of the CfD with Capacity Market will again be revised in Autumn 2012 following the publication of DECC's annual updated assumptions on technology costs, fossil fuel prices, and demand. In addition the modelling will be migrated to a DECC in-house Dynamic Despatch model and as discussed in section 3.1.3 will incorporate further methodological changes to enhance the robustness of the analysis assessing the Capacity Market.

3.1.5 Emissions Performance Standard

The Government committed, in the Coalition Agreement, to the establishment of an Emissions Performance Standard (EPS) that will prevent coal-fired power stations being built unless they are equipped with sufficient Carbon Capture and Storage (CCS) to meet the EPS. Therefore an EPS will provide a clear regulatory signal that coal can only play a long-term role in the UK's energy mix if its carbon emissions are significantly reduced. The EPS will also complement the economic signals provided by the Carbon Price Floor (CPF) and Feed-in Tariff with Contracts for Difference (CfD). Initially it will support the requirements set out in the National Policy Statements (NPS), and in the longer term could be used to give a clear regulatory signal on emission reductions.

The EPS will initially be set at a level equivalent to 450g/kWh for all new fossil fuel plant, except CCS demonstration plants. This exemption allows for comprehensive demonstration across the full range of CCS technologies, to support a successful CCS demonstration and eventual deployment.

The IA accompanying the EMR White Paper focused on the introduction of the EPS and the level of the EPS and discussed the principle of grandfathering[5] the level of the EPS. Two options were considered:

1. **Introduce an EPS as an annual limit on the amount of CO_2 a new fossil fuel plant can emit, equivalent to 600gCO_2/kWh** for plant operating at baseload;

2. **Introduce an EPS as an annual limit on the amount of CO_2 a new fossil fuel plant can emit, equivalent to 450gCO_2/kWh** for plant operating at baseload with exemptions for early CCS projects benefiting from funding from the UK CCS Delivery Programme or the EU's New Entrant Reserve (NER).

Both options assumed grandfathering of the EPS level for operational life for the purposes of the analysis.

Both options were considered to provide further clarity on the regulatory environment for fossil fuel power stations in addition to existing consenting policy. However, the options differ in their treatment of early CCS projects benefiting from Government or EU funding. The first option does not exempt these projects, whereas the second option does. Not exempting these projects under the first option implies a minimum proportion of a new plant must be fitted with CCS, while the second option does not constrain the choice of project. This was considered an important benefit and therefore the second option was chosen.

The IA estimates that this option does not impact generators' investment decisions or pattern of generation compared to the baseline (the baseline includes the EMR policies except the EPS), but administrative costs have been identified; an initial regulatory exchange to establish the EPS value for each new fossil fuel-fired plant - estimated to be approximately £5,000 in current prices. There will also be operating

[5] Grandfathering provides clarity to developers over the emissions limits that their plant will face for a set period of time. This clarity will help developers when making a decision of whether or not to invest in the electricity market

costs of the EPS estimated to be approximately £50,000 per annum, based on staff costs, IT costs and enforcement costs.

Table 8 sets out the estimated Net Present Value of the policy:

Table 8: Summary of Societal Costs and Benefits, NPV 2011-2030

Costs	£0.6m
Benefits*	£0m
Net Benefit	**-£0.6m**

* No quantifiable benefits identified

The EMR White Paper, which the first EPS IA accompanied, confirmed that the second option was the chosen option and that the principle of grandfathering would be applied to the EPS level.

The second EPS IA (accompanying the Energy Bill alongside the first) focuses on the details of the grandfathering provision. The starting point for the second EPS IA was the chosen option from the White Paper IA. Three options are considered:

1. "Do nothing": introduce an EPS of 450gCO_2/kWh with grandfathering of the level for 30 years, which is the expected operational life of a CCGT plant[6];

2. Introduce an EPS of 450gCO_2/kWh with grandfathering of the level until 2018, which is one of the first review points of the policy;

3. Introduce an EPS of 450g/kWh with grandfathering of the level until 2045 after which the policy comes to an end**.**

The first option provides the most clarity over the EPS for generators, but would not allow Government to control emissions from fossil fuel plants in the years before 2050 if needed to help meet the 2050 carbon emissions target. By definition, a "do nothing", option has no costs or benefits compared to the baseline.

[6] As estimated by Parsons Brinckerhoff in their 2011 report http://www.decc.gov.uk/assets/decc/11/about-us/economics-social-research/2127-electricity-generation-cost-model-2011.pdf

The second option provides a maximum of two operational years of clarity over the level of the EPS, which could affect the plants load factor within a given year and hence its revenue, and so this option was considered to introduce regulatory risk compared to the baseline. Responses to the informal consultation indicated that investors would heavily discount any revenue gained once grandfathering had come to an end. It was proposed that under this scenario, there would be no new investment in Combined Cycle Gas Turbines (CCGTs) compared to the baseline once the EPS was in force. It was estimated that this would lead to a negative net change in economic welfare.

The grandfathering period provided by the third option diminishes the later that the plant becomes operational. DECC modelling suggests that new CCGTs within the scope of the EPS will have between 22 and 25 years of grandfathering. It has not been possible to accurately predict the impact of such grandfathering periods on investment decisions. Each developer will have a different appetite for risk, meaning that the investment case of some projects will not be altered, while it will be for others. It is recognised that while it has not been possible to accurately analyse this option, it may have costs compared to the baseline.

However, this third option provides flexibility as it allows Government to take action to drive down emissions with an EPS to help meet the 2050 emissions target if needed. However, if we are on track to meet out 2050 targets, the amount of generation from gas is likely to be very low, and the EPS may be a redundant policy instrument.

This important benefit is the reason why Option 3 had been chosen over option 1 even though it may have costs.

3.1.6 RO Transition

The Renewables Obligation (RO) is imposed on all licensed electricity suppliers which supply electricity in England & Wales, Scotland and Northern Ireland. Suppliers must submit a certain number of Renewables Obligation Certificates (ROCs) in respect of each megawatt hour of electricity that each supplies to customers in England & Wales during a specified period known as an obligation period. Generators of electricity from eligible renewable sources are awarded ROCs

for every megawatt hour they generate. These certificates can be sold to energy suppliers along with the electricity they buy or can be traded independently.

Throughout the Electricity Market Reform process, the Government has set out clear and transparent transition arrangements from the RO to the new support mechanism, with the aim of preventing a hiatus in renewables investment while the new arrangements are being put in place. The transitional arrangements will affect how the value of a Renewables Obligation Certificate (ROC) is determined from 2027. The precise date of implementation will be the subject of secondary legislation. Currently, the value of a ROC to the electricity supplier is determined by the buyout price and the difference between the level of the Obligation and the number of ROCs surrendered to Ofgem (also known as “headroom basis”). In the EMR White Paper, Government set out its intention to continue to calculate the Renewables Obligation on a headroom basis until 31 March 2027, whereupon it would move to a Fixed ROC system until the end of the RO in 2037.

It is therefore proposed that ROCs surrendered by generators will be bought by a central institution at a predetermined price. The institution recovers costs from suppliers in the same proportion as their share of the electricity supply market. The policy intent is to introduce Fixed ROCs from 2027.

Although there may be some upfront administration costs incurred to set up the new system, costs are expected to remain the same under the Fixed ROC system as although there would be no buyout fund to recycle to energy suppliers, the Institution would have to incur additional costs in levying energy suppliers to recover the cost of paying ROCs to generators. There is not enough information to calculate exactly how much administrative costs would change under the current option. Further evidence will be gathered to produce a more robust estimate for subsequent Impact Assessments.

Under current arrangements, the Obligation is set for the forthcoming financial year, and if ROCs generation is higher than the Obligation, generators receive a recycling payment. The Obligation is set at the forecast level of ROCs generation plus 10 per cent ‘headroom’. If ROCs generation is at the level forecast, then there will be recycling payments, boosting the value of individual ROCs to the avoided buyout

price plus 10 per cent. If the level of ROCs is more than 10 per cent below the Obligation level, then the recycling fund will be bigger, and the value of each ROC higher; if is less than 10 per cent below the Obligation level, the value of each ROC will be lower. Over several years, if there is no systematic bias to the error in forecasting ROCs generation, the ROC value should average out at the buyout price plus 10 per cent.

There are two key risks inherent in the current system:

- If ROCs generation is more than 10 per cent higher than forecast and hence exceeds the Obligation level, there may be a collapse in the value of ROCs, undermining investor confidence in the system. This is mitigated to a certain extent by the ability suppliers have to 'bank' ROCs from one year to be used towards the following year's Obligation.

- If ROCs generation is systematically overestimated (for example, it was overestimated in both 2010/11 and 2011/12), then electricity suppliers and generators will be overcompensated (with the sharing of this surplus dependent on the terms of their contracts). As these payments are unanticipated, they are essentially excess profit, and may not impact on deployment. Nevertheless if the ROCs generation is systematically overestimated there will be an impact on consumer costs, and hence consumer bills – removing the systematic overestimate could therefore reduce cost to consumers.

There are several factors which make it difficult to predict the level of ROCs generation in advance which may cause investors to heavily discount, or disregard, ROC income from the latter years of the subsidy regime. This makes it more difficult to secure debt financing with a longer term, and therefore deployment of these types of project may be hampered.

Moving to a Fixed ROC system will give generators certainty over the incentive they receive, and investors the long-term visibility to provide debt financing with a longer term. It will also eliminate the potential rents.

Table 9 sets out the estimated Net Present Value of the move to a Fixed ROC system over the lifetime of the policy, under the two options. Given the uncertainty

attached to estimating whether the costs are more or less significant than the benefits, it is expected that the change would be broadly neutral. This is based on the changes in administrative costs cited above, and not on any of the potential impacts on either consumer costs and / or deployment. Modelling of these is very uncertain.

Table 9: Summary of Societal Costs and Benefits, NPV 2011/12-2039/40

	Fixed ROC from 2017	**Fixed ROC from 2027**
Costs	£ Positive	£ Positive
Benefits	£ Positive	£ Positive
Net Benefit	**£0 (central estimate)**	**£0 (central estimate)**

3.1.7 Final Investment Decisions (FIDs)

The Government is committed to working actively with relevant parties to enable early investment decisions in low-carbon plant to progress to timetable wherever possible including ahead of EMR.

Current market arrangements are not expected to deliver the scale and pace of investment in low-carbon generation required to meet our long-term targets. EMR has been designed to tackle these barriers to investment. However, developers that require FID before the reform programme has been implemented will not invest until they have certainty over what it will deliver. Without Government intervention to provide such assurances, investments in low-carbon generation are expected to be delayed putting decarbonisation, security of supply, and affordability objectives at risk.

Our analysis shows that enabling early investment decisions delivers a more socially optimal generation mix out to 2030, both in terms of generation capacity, and in terms of capacity utilisation. By offering greater certainty on reforms to low carbon investors who are ready to make a final investment decision before EMR has been fully implemented, the Government will help deliver its decarbonisation ambitions in

a more cost-effective way, and mitigate the risks of high impact scenarios from occurring, which carry large welfare costs.

Bringing forward low carbon projects introduces a trade-off between carbon and generation cost savings, and higher capital spend. Our central case suggests that there is a net welfare gain of £2bn (NPV) associated with introducing an effective FID enabling product. This result is robust to changing fossil fuel prices and reductions in demand, in the case of lower economic growth for example, however it is sensitive to the deployment rate of nuclear.

In the IA four possible delivery options are considered:

1. **Do nothing**. Under our preferred counterfactual, developers are risk averse and wait until EMR is implemented in 2014, with strike price and contract terms known, before taking their FIDs.

2. **A non-binding letter of comfort offering assurance** covering, for example, eligibility, strike price banding, high-level risk allocation, and wider government action to support investments. The content of the letter would not be binding on the Government or the delivery body.

3. **A Feed-in Tariff with Contracts for Difference (CfD) where the Secretary of State provides a commitment to the developer that they will receive a CfD on agreed terms and conditions**, provided that the EMR legislation does come into force, and that any necessary state aid approvals are forthcoming.

4. **A CfD where the Secretary of State provides a commitment to the developer that they will receive a CfD on agreed terms and conditions**, provided primary powers are secured and any necessary state aid approvals are forthcoming.

The monetised cost benefit analysis (CBA) does not distinguish between the different policy options as described above. There is no material difference between the options that can be quantified and modelled with numbers. The CBA therefore justifies continuing discussions with interested parties on the grounds that there are

benefits to early low-carbon deployment. The Government maintains the option to walk away if an agreement cannot be reached, and under these circumstances a small cost is incurred associated to conducting the negotiations, estimated to be up to £20m.

3.2 Ofgem Review

The Ofgem Review was a Coalition Agreement commitment. These clauses implement the main conclusion of the review: that Government will publish high-level policy outcomes for Ofgem to report against.

A new statutory 'Strategy and Policy Statement' will be established. This document will:

- Set out the Government's strategic goals for the gas and electricity markets
- Describe the roles and responsibilities of Government, Ofgem, and other relevant bodies, and
- Define policy outcomes that Government considers Ofgem to have a particularly important role in delivering.

The accompanying IA describes the rationale for intervention and explains how regulatory uncertainty has resulted from a lack of clarity over the respective roles of GEMA and Government and considers different options to reduce this.

The options considered in the IA are as follows:

1. **Do nothing**. In this scenario, the legislative framework would remain with GEMA's existing principal objective, statutory duties, the Guidance that the regulator must have regard to and the potential for Government, in extremis, to make specific changes to regulatory detail through primary legislation.
2. **Establish a new ad hoc 'Power to Direct'**; taking a power for the Government to define individual policy outcomes that GEMA would be legally bound to operate in line with whenever the Government saw fit and within the independence constraints imposed by the EU Third Package. The existing Guidance could be repealed.

3. **Establish a new 'Strategy and Policy Statement'**. This would mean Government periodically establishing a coherent set of policy outcomes that GEMA would be legally bound to justify their actions against, expected to remain stable over a Parliament. The existing Guidance would be repealed. This is the preferred option because it offers the most coherent, stable and predictable approach.

The impacts of the options are assessed on a primarily non-monetised basis, since actual costs and benefits will depend on Government policy and the regulatory decisions taken by Ofgem. This assessment is summarised below:

Option 1 would have a negligible impact on the issues around role clarity and accountability as, even if ways of working were improved, the underlying causes of the problems identified would remain.

Option 2 would, where the power is used, create greater confidence that the Government and the regulator are aligned and that this coherence would be enduring. It would also increase the regulator's focus and, potentially, its efficiency in the policy area where Government has made the appropriate trade-offs. Although adding to the adaptability of the regulatory regime, the introduction of the ad hoc Power to Direct could reduce predictability and give rise to unintended consequences in the market depending on how it was applied.

Option 3 is the preferred option as this is expected to deliver best against the policy objective of reducing regulatory uncertainty for investors in the energy sector. This reduction in regulatory uncertainty has been assessed using the BIS principles for economic regulation. As the costs and benefits to reducing regulatory uncertainty cannot be quantified, the decision has to be based on some subjectivity. Based on the evidence considered the Strategy and Policy Statement is expected to be the best option. The IA estimates that the proposal entails no net costs to business.

3.3 Creation of the Statutory Office for Nuclear Regulation

The 2008 Stone Review made clear recommendations for improvements to the UK's nuclear regulator. At that time, the HSE's Nuclear Directorate was responsible for nuclear regulation. From 1 April 2011, the non-statutory ONR was set up as an

agency of the HSE pending legislation to create a statutory body. Under the current arrangements, the HSE Board is accountable to ministers for the ONR.

The legislation the Government is proposing would make the ONR a stand-alone, statutory body with a Board that is fully and directly accountable to ministers and to Parliament. It is proposed that legislation would set out a clear governance model for the statutory ONR; provide for the appointment of a statutory Board; and transfer the statutory regulatory functions for nuclear safety, security, safeguards, and the transport of radioactive material to the statutory ONR.

The evaluation of the policy options are assessed in the accompanying IA. In summary two broad options were considered:

1. Retain the interim ONR with no legislative intervention; or

2. Establish the statutory ONR using legislative means.

The option to simply retain the interim ONR will not facilitate the development of a regulator that is sufficiently transparent, accountable, properly resourced, independent or effective; legislation is needed in order to remove the remaining barriers to achieving this.

It is therefore proposed that the interim Office for Nuclear Regulation (ONR), will be placed on a statutory footing by means of primary legislation. This legislation will set out a clear governance and accountability model for the new statutory ONR and transfer the relevant statutory regulatory functions to the ONR from the Secretary of State.

The IA estimates that the one-off costs of establishing the statutory ONR will be around £960,000. Annual running costs are estimated to increase by around £13m per year compared to those incurred by the interim ONR, reflecting the need for the statutory ONR to recruit additional staff, establish its own Board and provide for itself support functions currently provided by HSE. The additional running costs are expected to be offset by around £1.3m per year from reductions in accommodation costs and other operational expenses.

An adequately resourced, statutory ONR is expected to lead to direct benefits for nuclear operators. The IA estimates that benefits of around £3.2m per year will result from a reduction in regulatory delays of two days per year in restarting reactors after outages. In addition, it is estimated that there would be a benefit of around £78m by reducing by one month regulatory delays to the new nuclear power programme by one month.

Table 10 sets out the estimated Net Present Value of the policy over an appraisal period of ten years.

Table 10: Summary of Societal Costs and Benefits, NPV 2011-2020

Costs	£56.7m
Benefits	£82.3m
Net Benefit	£25.6m

3.4 Government Pipeline and Storage System (GPSS)

This measure seeks to enable the sale of MoD-held assets which pump aviation fuel to UK and US airbases, as well civilian airports.

The figures in the IA have been redacted for reasons of commercial sensitivity, however the IA shows that sale of the GPSS will generate a capital receipt in order to pay down Government debt and should deliver value for money. It may also enable greater commercial exploitation of the GPSS to meet the current and future requirements of civilian airports.

The sale is not expected to lead to increased costs to customers, since the GPSS is already operating under the same health, safety and environmental regime as private pipelines, although a purchaser may seek to increase revenues and profitability, subject to market forces.

Once sold, the GPSS would be operated under a similar regime to civilian pipelines constructed under the Pipelines Act 1962, which will ensure that a privately owned

GPSS pipeline is not at a commercial advantage to its competitors. Sale of the pipeline will not impact on Defence outputs.

3.5 Offshore Transmission Systems

In 2010, the Government decided to enable offshore windfarm developers to build their own transmission infrastructure back to shore for the export of power (the 'generator build' model). Before developers start generating power, they need to test the conveyance of electricity over their transmission assets, before transferring them to an Offshore Transmission Owner (OFTO) upon completion.

This measure provides an exception to the prohibition of participating in the transmission of electricity without a licence for a person who participates in offshore transmission activity during a commissioning period in certain circumstances, to avoid a company transmitting over assets constructed under the generator build model from falling foul of the law. This change to the Electricity Act 1989 is crucial to ensure that developers of offshore generating stations can test and commission transmission infrastructure to export power without committing a criminal offence.

The measure is a technical change to enable the generator build model to function as intended. Implementation of the generator build model is not expected to lead to any additional costs or benefits beyond those already identified for implementation of the offshore transmission regime (see December 2010 Impact Assessment[7]). The costs and benefits associated with the regime are summarised below.

Table 11: Summary of Societal Costs and Benefits, NPV 2010-2029

Costs	£302-309m
Benefits	£763-1699m
Net Benefit	£461-1390m

[7] http://www.decc.gov.uk/assets/decc/Consultations/offshoreElectricityTransmission/1032-ia-extension-offshore-transmission.pdf, and the March 2009 Impact Assessment, available at http://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/files/file50576.pdf

Section 4: Other Impacts

4.1 Net costs to business (including One in One Out)

As part of the Impact Assessment process we have also applied 'One-In, One-Out' methodology (OIOO) to identify any new net costs to business from regulatory measures included in the Bill. For the majority of policies the individual IAs show that these are out of scope of OIOO. Only the EPS measures is within scope and the EPS "In" will be validated and the department will aim to provide an offsetting "Out" to comply with One-in, One-out policy at secondary legislation stage when the details of the administrative regime will be decided.

4.2. Equality, Human Rights, Privacy and Justice System

The policy measures in the accompanying IAs are not expected to impact on equality as set out in the Statutory Equality Duties Guidance. There are also no foreseen impacts of the options on human rights, privacy, and the justice system.

Glossary

Access Land	Land not owned by the landowner on or under whose land the GPSS runs, but over which he exercises a right to pass in order to access his own land on or under which the GPSS runs.
ACOPs	Approved Codes of Practice. See HSWA, s.16
ADN	Regulations annexed to the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterway.
ADR	Annexes A and B to the European Agreement concerning the International Carriage of Dangerous Good by Road.
AP	Additional Protocol to the UK Safeguards Agreement.
Auction	A price discrimination mechanism for the buying/selling of goods or services by offering them up for competitive bid, taking bids, and then selling the item to realise the greatest value.
Authority	The Authority refers to The Gas and Electricity Markets Authority (GEMA) who govern Ofgem.
Balancing Mechanism	Balancing Mechanism (BM) is a reserve service contracted on-the-day by the System Operator to ensure plant with a start up time of several hours is available in the Balancing Mechanism at peak.
Baseload generation	Baseload generation generally operates continuously to serve the minimum electricity demand over a given period of time (“baseload”).
Bilateral markets/contracts	A direct contract between the power producer and user or broker outside of a centralized power pool.
BM Start Up	BM Start Up is a reserve service contracted on-the-day by the System Operator to ensure plant with a start up time of several hours is available in the Balancing Mechanism at peak.
BETTA market	British Electricity Trading and Transmission Arrangements is a single wholesale electricity market for Great Britain with a single transmission system operator (National Grid) independent of generation and supply introduced April 2005.
Biomass	A renewable energy source made from plant or animal materials. Can include crops grown specifically for Energy generation or make use of waste products directly or from a secondary process (e.g. decomposition to produce biogas).
Buy-out price	In the context of a balancing mechanism; the buy-out price sets the rate which suppliers need to pay for additional electricity required. In the context of the RO, it is the rate licensed electricity suppliers need to pay if they do not

	present sufficient numbers of ROCs to meet their obligations under the RO scheme.
CAA	Civil Aviation Authority
Capacity margin	The difference between peak demand and installed capacity on the system, adjusted for probable availability at peak.
Capacity Market	A type of Capacity Mechanism in which the total volume of capacity required is estimated, and providers willing to offer capacity (whether in the form of generation or non-generation technologies and approaches such as storage or demand side response) can sell that capacity. There are several forms of Capacity Market, depending on the nature of the 'capacity' and how it is bought and sold.
Capacity mechanism	Policy instrument designed to help ensure security of supply by providing a more secure capacity margin than that which would be determined by the market without intervention.
Capacity payments	A type of Capacity Mechanism where the price paid for capacity, rather than the volume required, is set centrally.
Carbon Capture and Storage (CCS)	CCS technology captures carbon dioxide from fossil fuel power stations. The CO_2 is then transported and stored safely, offshore, in deep underground structures such as depleted oil and gas reservoirs, and deep saline aquifers.
Carbon Price Floor (CPF)	A carbon price support mechanism to support investment in low carbon generation. The Government has achieved this by reforming the climate change levy (CCL) and fuel duty, to enable fossil fuels used for power generation to be taxed on the basis of their carbon content..
'Cash out'	The process used to settle differences between financial contracts and physical metered volumes of electricity wholesale market participants
Cash-out reform	Ofgem project to increase the accuracy of cash out prices and improve security of supply by providing greater market confidence
CEO	Chief Executive Officer
CEPA	Cambridge Economic Policy Associates
CCGT	See *Combined Cycle Gas Turbine*.
Chattel	An item of movable property
Climate Change Levy	The levy is part of a range of measures designed to help the UK meet its legally binding commitment to reduce greenhouse gas emissions. It is chargeable on the industrial and commercial supply of taxable commodities for lighting, heating and power by consumers in the following sectors of business: • industry • commerce • agriculture • public administration • other services
Climate Change Act	The Climate Change Act (2008) – UK legislation.
Coalition	The Coalition's programme for government, setting out

Agreement	agreements between the parties on various issues. Released in May 2010.
Combined Cycle Gas Turbine (CCGT)	A gas turbine that generates electricity. Waste heat is used to make steam to generate additional electricity via a steam turbine, thereby increasing the efficiency of the plant.
Combined Heat & Power (CHP)	Generation where both heat and power is produced. This results in a more efficient use of both fossil and renewable fuels.
CNC	Civil Nuclear Constabulary
CNI	Chief Nuclear Inspector
CNPA	Civil Nuclear Police Authority
Contracts for Difference (CfD)	Agreements that provides variable premium payments on top of an underlying wholesale electricity price that ensures the generator receives a stable revenue. In the event the wholesale price is higher than the capped level monies may be required to be repaid.
CO_2/kWh	Carbon Dioxide emitted per Kilowatt Hour
CPPNM	Convention on the Physical Protection of Nuclear Material
Day Ahead Market	'Day-ahead' trading refers to buying and selling for delivery of electricity on the day before delivery.
DCNS	Director of Civil Nuclear Security
Demand Side Management	The planning, implementation, and monitoring of utility activities designed to encourage consumers to modify patterns of electricity usage, including the timing and level of electricity demand.
Demand side response	Demand side response (DSR) is active, short term, reduction in consumption whereby an energy user or aggregator guarantees to reduce demand at a particular time. It can be used to help balance supply and demand in a context of significant intermittent and inflexible generation. It enables this by shifting demand from periods where demand is greater than supply to periods where supply is more plentiful - by self-supplying using local backup generation, or by not using the electricity.
Devolved Administrations	The Northern Ireland Executive, Scottish Government and Welsh Government.
Emissions Performance Standard	A back-stop to limit how much carbon the most carbon intensive power stations - coal - can emit. An emissions performance standard will reinforce the existing requirement that no new coal is built without demonstrating carbon capture and storage technology.
Energy Company Obligation	Government proposal to create a new obligation on energy companies, as from the end of 2012, which draws on the strengths of the existing energy company obligations. The priorities for ECO are: • To ensure that households who are less able to take advantage of Green Deal finance can still be supported and can improve their homes; and • Vulnerable households on low incomes, as well as

	those in properties that are more difficult to treat, will be a key focus of the scheme.
Energy unserved	The amount of demand within each year that cannot be met due to insufficient supply.
(UK's) Renewable energy targets.	EU target requiring that at least 15 per cent of UK energy comes from renewable sources by 2020.
EU Emissions Trading System	This is a Europe-wide cap and trade scheme that sets an overall cap on the total emissions allowed from all the installations covered by the System. This is converted into allowances (1 allowance equals 1 tonne of CO_2) which are then distributed by EU member states to installations covered by the System. From 2013, there will be full auctioning for the power sector in GB.
Euratom	Treaty establishing the European Atomic Energy Community
Feed-in Tariffs (FiTs)	A type of support scheme that provides revenues to certain generators, such as low-carbon generators,
Fixed FiT (FFiT)	Support scheme where a fixed rate is paid per unit electricity produced
Forward Market	'Forward' trading refers to buying and selling for delivery of electricity at a future date, usually month, season or year ahead.
Gaming	The exploitation of the market structures supported by Government pursued by participants in the electricity market in order to realise additional gains outside the agreed contracts or intended benefits..
gCO_2/kWh	Grams of carbon dioxide produced per kilowatt hour of energy generated.
GPSS	Government Pipeline and Storage System
Grandfathering	In the context of the EPS: the ability to allow some activities or former rights to continue even though they would not technically be allowed under current conditions. In the context of the RO; it is the policy intention that once accredited the level of support generators receive does not change for the period of time that they are eligible to receive the RO.
Green Deal	The Green Deal provides support for the implementation of energy efficiency measures to households and businesses without needing to meet any upfront costs.
Green Investment Bank	A body which will start lending money to support green deal policies and areas like offshore wind from 2012
GW	A measure of power (usually electricity) equivalent to 1,000,000 kilowatts. One gigawatt of electricity would meet the energy needs of over 600,000 UK households, around 1.5 per cent of the UK energy supply. e.g. 1,000,000,000 W 1,000,000 kW 1,000 MW 1 GW 0.001 TW

GWh	A measure of energy (usually electricity) equivalent to 1,000,000 kilowatts for a whole hour. One gigawatt of electricity would meet the energy needs of over 600,000 UK households, around 1.5 per cent of the UK energy demand.
Hedge	'Hedging' refers to making some kind of investment, with the objective of reducing exposure to (short-term) price movements in an asset already held. Normally, a hedge consists of taking an offsetting position in a related asset. Hedges can be either financial or physical. For example, a generator might hedge the risk of electricity price movements: • financially, by selling electricity in the forward markets or entering into long-term contracts, or • physically, by integrating with an electricity supply business, such that any downward movement in prices resulting in a loss in revenues for the generation business is offset by an increase in revenues for the supply business.
HSE	Health and Safety Executive
HSWA	Health and Safety at Work etc Act 1974
IAEA	International Atomic Energy Agency
Imbalance Settlement or 'cash out'	See 'cash out'
Industrial Emissions Directive (IED)	The IED will consolidate seven existing European Directives relating to industrial installations with the aim of providing a single clear and coherent legislative instrument for controlling pollution from industrial operations.
Interconnection	Physical linking of a network with electricity generation, usually between countries
Interim ONR	An agency of the HSE that exercises that bodies' functions in relation to the nuclear industry
Intermittency or Intermittent generation	Any generation which is inherently variable and dependent on primary power sources outside the control of generators, e.g. wind, hydro, wave, and solar.
Kilowatt-hour (KWh)	A kilowatt-hour is a unit of energy equivalent to one kilowatt (1 kW) of power expended for one hour (1 h) of time.
Lands Tribunal for Scotland	A civil tribunal in Scotland with statutory power to deal with various types of dispute involving land or property.
Levy Exemption Certificates (LECs)	LECs ors Levy Exemption Certificates are evidence of CCL exempt electricity supply generated from qualifying renewable sources.
Local Land Charge	In the context of the GPSS this is a charge registered or capable of being registered against the land on or under which the GPSS runs, restricting the use or prohibiting specified uses of land or that falls within the definition of a local land charge under the Local Land Charges Act 1975 and is binding on successive owners of that land.
Low-carbon	Power generated from sources that produce less

generation	greenhouse gases per unit of power than traditional means of power generation.
Low Carbon Technologies	Technologies that are used to produce energy with low-carbon emissions. These include, wind power, solar power, geothermal power and nuclear power, and also technologies that prevent carbon dioxide from being emitted into the atmosphere, such as carbon capture and storage.
Marginal cost	The change in total cost that arises when the quantity produced changes by one unit.
MCA	Maritime and Coastguard Agency
Megawatt Hour (MWh)	A measure of energy equal to 1000 kWh.
Mid-merit generation	Generation which falls between baseload and peak generation , currently CCGT gas in the current UK energy mix.
National Grid	The National Grid is the high-voltage electric power transmission network in Great Britain, connecting power stations and major substations and ensuring that electricity generated anywhere in Great Britain can be used to satisfy demand elsewhere.
National Policy Statements	The Government produces National Policy Statements (NPS) that establish the national case for infrastructure development and set policy framework for the decisions on major infrastructure projects.
NIA	Nuclear Installations Act 1965
NISRs	Nuclear Industries Securities Regulations 2003. SI 2003/403
Non-baseload	Non-baseload generation is procured progressively as demand increases. See *mid-merit generation* and *peaking plant*.
Non-Spinning Reserve	The non-spinning or supplemental reserve is the extra generating capacity that is not currently connected to the system but can be brought online after a short delay. In isolated power systems, this typically equates to the power available from fast-start generators. However in interconnected power systems, this may include the power available on short notice by importing power from other systems or retracting power that is currently being exported to other systems.
NPT	Treaty on the Non-proliferation of Nuclear Weapons.
Nuclear Regulations	Regulations made under the powers in the Bill requested in these instructions.
OCCS	Office of Carbon Capture and Storage, part of DECC.
OCNS	Office for Civil Nuclear Security, part of DECC.
Ofgem	'Office of the Gas and Electricity Markets' is the independent regulator for the energy sector.
Oil and Pipelines Agency	A Public Corporation responsible for managing the Government Pipeline and Storage System on behalf of the Ministry of Defence.
Offtake risk	Risk that generators – particularly small, intermittent

	generators such as onshore wind, will be unable to guarantee a buyer for their electricity impacting their ability to obtain finance.
OFTO	Offshore Transmission Owner. Government has put in place a new regulatory regime for offshore electricity transmission. A key element of the regime is the competitive tender process run by Ofgem to appoint OFTOs to construct (where a generator chooses not to do so itself) and own and operate the offshore transmission assets.
OND	Office of Nuclear Development, DECC
ONR	Office for Nuclear Regulation created under this draft Bill
Operating Reserve	Operating reserve is the generating capacity available to the system operator within a short interval of time to meet demand in case a generator goes down or there is another disruption to the supply
ORED	Office for Renewable Energy Deployment, part of DECC.
Peak load, peak demand	These two terms are used interchangeably to denote the maximum power requirement of a system at a given time, or the amount of power required to supply customers at times when need is greatest. They can refer either to the load at a given moment (e.g. a specific time of day) or to averaged load over a given period of time (e.g. a specific day or hour of the day).
Peak-load generation / Peaking plant	Peak-load generation is used to satisfy short periods of maximum demand. Typical fast-start generation such as pumped storage and open cycle gas turbines.
Plant flexibility	The ability of generation plant to respond to demand at short notice.
Posted Price	The price at which a company will buy or sell a commodity. In markets where an official exchange does not operate, traders will often refer to the posted prices of the major companies trading that commodity. The posted price is similar to a company's bid and ask
Premium FiT (PFiT)	A payment which generators receive in addition to their revenues from selling electricity in the wholesale market.
Ofgem's Project TransmiT	Ofgem's independent review of the charging arrangements for gas and electricity transmission networks, and the connection arrangements
Power Purchase Agreement (PPA)	Agreement to purchase some pre-specified quantity of electricity over a specified future time period. Usually includes associated products such as ROCs and LECs
Register of Sasines	A national register in Scotland that records deeds relating to ownership of land or buildings
Reliability market approach	A market wide capacity mechanism in which all providers willing to offer reliable capacity (whether in form of generation, storage or demand response) receive payment for doing so. In times of scarcity/high prices, they repay any revenues above a "strike price" to the counterparty to the contract – in effect exchanging high revenues in times of

	scarcity for a steady revenue stream.
Renewables	Energy resources, where energy is derived from natural processes that are replenished constantly. They include geothermal, solar, wind, tide, wave, hydropower, biomass and biofuels.
Renewable Obligation Certificate (ROC)	A Renewable Obligation Certificate (ROC) is a green certificate issued to an accredited generator for eligible renewable electricity generated within the UK .
Renewable Energy Micro Generation	The production of heat and/or electricity on a small-scale from a low carbon source, under 50KW installed capacity.
Renewable Energy Strategy (RES)	Government strategy aiming to increase the use of renewable energy in the UK, as part of the overall strategy for tackling climate change and to meet the UK and EU targets
Renewables Obligation (RO)	The UK's current scheme to incentivise large scale investment in renewable generation. An obligation on licensed electricity suppliers to provide a set number of Renewable Obligation Certificates (ROCs) per MWh of electricity supplied in the UK.
Reference price	The underlying price used to underpin Contracts for Difference.
Reserve Capacity	Capacity in excess of that required to carry peak load.
Reserve Generating Capacity	The amount of power that can be produced at a given point in time by generating units that are kept available in case of special need. This capacity may be used when unusually high power demand occurs, or when other generating units are off-line for maintenance, repair or refuelling.
Reserve Margin (Operating)	The amount of Reserve Capacity as a percentage of total capacity.
RO Banding Review	The process whereby the band levels for technologies eligible for support under the Renewables Obligation are set. A Banding Review is currently underway to determine the support levels that will be in effect from 1 April 2013 (1 April 2014 for offshore wind).
Round 3 offshore	The third leasing round for offshore windfarms undertaken by the Crown Estate. Round 3 (launched in 2008) has the potential for around 32GW – it does not include Scottish Territorial Waters.
RMTT	Radioactive Materials Transport Team
Scottish Environment Protection Agency (SEPA)	Scotland's environmental regulator, equivalent of the Environment Agency for England and Wales.
Security of supply	The certainty with which energy supplies (typically electricity, but also gas and oil) are available when demanded.
Short Term Operating Reserves (STOR) by National Grid	Short Term Operating Reserve is a service for the provision of additional active power from generation and/or demand reduction.

Significant Code Review (SCR)	Ofgem introduced the process of SCRs in 2010 as a result of their review of industry code governance. SCRs give Ofgem a leadership, coordination and change initiation role where a number of code changes are necessary in order to address an issue with a significant impact on the achievement of their remit. This allows Ofgem to drive code changes forward in a way it could not do previously.
Single Electricity Market (SEM)	The electricity market that covers the Republic of Ireland and Northern Ireland
'slippery slope' (over-procurement)	If being in the capacity mechanism and receiving a capacity payment is more attractive than remaining wholly in the market, it could lead to lack of investment outside of the mechanism, meaning that the central body has to procure ever more generating capacity.
Smart Grid	A smart grid is an electricity network which makes use of information and communications technologies (ICTs), enabling more dynamic 'real-time' flows of information on the network and more interaction between suppliers and consumers.
Smart Meters	Technology which can provide information on energy use directly to energy consumers (for example through display units or through the internet) with the potential to provide gas and electricity customers with accurate bills as well as real time information that could help them use less energy.
Spot Price	The current price at which a particular commodity can be bought or sold at a specified time and place
Spinning reserve	The spinning reserve is the extra generating capacity that is available by increasing the power output of generators that are already connected to the power system (but not operating at their full capacity).
Spot trading	Trading for delivery on the same day as the trade (within day).
State Aid	Requirement of the EU Treaty to ensure that government interventions do not distort competition and trade inside the EU. In this respect, state aid is met where there is a transfer of state resources, which provides a selective advantage and has the potential to distort competition and trade.
Strategic reserve	Strategic Reserve is an amount of reliable capacity which is held outside the electricity market apart from under certain, exceptional conditions.
Strike Price	Contracted price, for example as part of a CfD agreement.
System Land	Land on or under which the GPSS is situated or any nearby land held by the same landowner.
System Operator (SO)	The System Operator (SO) is responsible for ensuring the electricity system remains balanced within each half hour period. Generators may generate more or less energy than they have sold; customers of suppliers may consume more or less energy than their supplier has purchased.
Targeted capacity	Under a targeted capacity mechanism, capacity payments

mechanism	are only made to those generators that provide the additional capacity needed to make up any anticipated shortfall in the capacity margin.
tCO_2	Tonne of carbon dioxide
Technology neutral	The absence of specific targets.
Test Resource Cost (TRC) Test	A ratio used to assess the cost effectiveness of a demand-side management program.
Thermal combustion plants	Fossil fuel power plant that burns coal, gas or oil to create electricity.
Transfer Scheme	A statutory scheme for the transfer to the Secretary of State for Defence of the property, rights and liabilities of the Oil and Pipelines Agency.
Transmission Charge	Part of the basic service charges on every customer's bill for transporting electricity from the source of supply to the electric distribution company. Public Utility Commissions regulate retail transmission prices and services.
Transmission Company	Company that transports electricity for resale on its own behalf or transports electricity for others. Also known as a pipeline company, in the UK this is National Grid
Transmission System (Electric)	An interconnected group of electric transmission lines and associated equipment for moving or transferring electric energy in bulk between points of supply and points at which it is transformed for delivery over the distribution system lines to consumers, or is delivered to other electric systems.
Stern Review (The Stern Review on the Economics of Climate Change)	Lord Stern's economic review on the short and long term costs and impacts of climate change.
UET Regs	Uranium Enrichment Technology (prohibition on Disclosure) Regulations 2004. SI 2004/1818
UKSO	United Kingdom Safeguards Office
Upper Tribunal	Part of Her Majesty's Courts and Tribunal Service.
Vertically Integrated Utilities	Where one business owns two or more parts of the energy supply chain. For example, where the same entity owns generation capacity and also supplies energy to the retail market.
Wayleave Order	In the context of the GPSS this is an agreement under which a landowner gives the Secretary of State for Defence a right to install pipeline passing through or over the owner's property.
Wholesale electricity price	The price of electricity sold directly from generators, generally sold at lower rate than retail prices.
Wind cannibalisation	Potential effect recognised in economic modelling whereby increased penetration of intermittent wind generation could lead to periods of too much wind supplied leading to negative pricing and wind and other generation being constrained off the grid. This is also a concern for the balancing mechanism.
1946 Act	Atomic Energy Act 1946

1978 Act	Nuclear Safeguards and Electricity (Finance) Act 1978
2000 Act	Nuclear Safeguards Act 2000
2004 Regulations	Nuclear Safeguards (Notification) Regulations 2004
2009 Regulations	Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009. SI 2009/1348
2050 targets	The UK target to reduce our carbon emissions by 80 per cent below 1990 levels by 2050.

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