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DRAFT STATUTORY INSTRUMENTS

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**2001 No.**

**The Electricity and Gas (Energy Efficiency Obligations) Order 2001**

**Citation, commencement, and interpretation**

1.—(1) This Order may be cited as the Electricity and Gas (Energy Efficiency Obligations) Order 2001 and shall come into force on the day after that on which it is made.

(2) In this Order—

“the 1986 Act” means the Gas Act 1986;

“the 1989 Act” means the Electricity Act 1989;

“carbon savings”, in relation to the fuel, or as the case may be, each of the fuels, used in any total activity, scheme or qualifying action, means the product of—

- (a) the annualised energy savings attributable to the fuel; and
- (b) the carbon intensity of the fuel, as specified in “Environmental Reporting—Guidelines for Company Reporting on greenhouse gas emissions”<sup>(1)</sup>,

expressed in tonnes of carbon per year;

“domestic consumer” means—

- (a) a consumer to whom electricity or gas is supplied at domestic premises in any part of Great Britain; and
- (b) a person who requests electricity or gas to be supplied to him at such premises (“future consumer”),

and where electricity or gas is supplied to a consumer, or proposed to be supplied to a future consumer, both at domestic premises and at premises that are not domestic premises, means the consumer or future consumer in relation only to the domestic premises;

“domestic premises” means premises at which a supply of electricity or gas is taken wholly or mainly for domestic purposes;

“energy savings”, in relation to any total activity, scheme or qualifying action, means the improvement or estimated improvement in energy efficiency achieved or expected to be achieved after completion of the action, expressed in gigawatt hours;

“energy service action” means action that—

- (a) includes at least two activities that are qualifying action for the purposes of this Order, of which one—
  - (i) may reasonably be expected to improve the insulation of the walls or loft of the domestic premises concerned; or
  - (ii) may reasonably be expected to improve the efficiency of the principal system for heating those premises; or

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<sup>(1)</sup> Published by the Department of the Environment, Transport and the Regions, March 2001. Copies may be obtained from PO Box 236, Wetherby, West Yorkshire, LS23 7NB (Tel: 0870 126 236) or downloaded from [www.defra.gov.uk/environment/envrp/gas/index.htm](http://www.defra.gov.uk/environment/envrp/gas/index.htm).

- (iii) consists of the supply to those premises of electricity, heat, gas or liquid in the circumstances mentioned in any of sub-paragraphs (a) to (c) of paragraph (3) below; and
- (b) is undertaken in pursuance of an agreement between the supplier or a person acting on its behalf, and a domestic consumer, the terms of which also require the supplier—
  - (i) to undertake an assessment of the energy efficiency of those premises;
  - (ii) to provide advice to the consumer as to the means by which the energy efficiency of those premises may be improved, taking into account his circumstances and those of any other occupant of the premises; and
  - (iii) to offer the consumer the option of making an arrangement with the supplier for deferring the whole or any part of the cost to the consumer of the activities for which the agreement provides;

“fuel-standardised”, in relation to a number of gigawatt or terawatt hours, means the number of such hours after the application of the relevant multiplier;

“gigawatt hour” means one million kilowatt hours;

“private landlord” means a landlord other than a social landlord;

“qualifying action” means activity which qualifies under article 6 for the purpose of achieving the whole or any part of a supplier’s target;

“relevant multiplier” means—

- as regards coal, 0.56;
- as regards electricity, 0.80;
- as regards gas, 0.35;
- as regards liquid petroleum gas, 0.43;
- as regards oil, 0.46;

“social landlord” means a local authority or a housing association;

“subsection (4) requirements” means—

- (a) in relation to electricity suppliers, the requirements of subsection (4) of section 41A of the 1989 Act;
- (b) in relation to gas suppliers, the requirements of subsection (4) of section 33BC of the 1986 Act;

“target”, in relation to—

- (a) a supplier which is subject to an energy efficiency obligation under article 2; and
- (b) any period,

means the energy efficiency target having effect for the time being as regards that period;

“terawatt hour” means 1,000 million kilowatt hours; and

“total activity” means the totality of the activity that a supplier undertakes, or intends to undertake, with a view to achieving the whole of its target.

- (3) For the purposes of this Order, the promotion of the supply to premises of—
  - (a) electricity generated by a generating station which is operated for the purposes of producing heat, or a cooling effect, in association with electricity;
  - (b) heat produced in association with electricity or steam produced from (or air or water heated by) such heat; or
  - (c) any gas or liquid subjected to a cooling effect produced in association with electricity,

shall be treated as promoting energy efficiency.

### **Energy efficiency obligations**

2.—(1) On 1st April 2002 each supplier to which this paragraph applies shall be subject to the obligation to achieve, within the period of three years beginning on that date, and in accordance with this Order, the target determined for it by the Authority(2) under article 3(2).

- (2) Paragraph (1) applies to—
- (a) every electricity supplier; and
  - (b) every gas supplier,

which, on 31st December 2001, supplies at least 15,000 domestic consumers.

- (3) Where a person—
- (a) supplies both electricity and gas to domestic consumers; and
  - (b) in relation to both electricity and gas is a supplier to which paragraph (1) applies,

its obligation under that paragraph applies separately in relation to its functions as an electricity supplier and as a gas supplier.

(4) If a supplier of electricity or gas to which paragraph (1) does not apply supplies at least 15,000 domestic consumers on 31st December 2002 it shall, with effect from 1st April 2003, be subject to the obligation to achieve, within the period beginning on 1st April 2003 and ending immediately before 1st April 2005, and in accordance with this Order, the target determined for it by the Authority under article 3(4).

(5) If a supplier of electricity or gas to which neither paragraph (1) nor paragraph (4) applies supplies at least 15,000 domestic consumers on 31st December 2003, it shall, with effect from 1st April 2004, be subject to the obligation to achieve, within the period beginning on 1st April 2004 and ending immediately before 1st April 2005, and in accordance with this Order, the target determined for it by the Authority under article 3(4).

(6) For the purpose of ascertaining, under this article or under article 3(6), the number of domestic consumers supplied, any consumers—

- (a) supplied by a holding company or subsidiary of the supplier, or
- (b) supplied by any subsidiary of such a holding company,

shall be treated as supplied by the supplier.

(7) In paragraph (6) “holding company” and “subsidiary” have the same meaning as in section 736 of the Companies Act 1985(3).

### **Determination and notification of energy efficiency targets**

3.—(1) For the purposes of the exercise by the Authority of its functions under this Order, the overall target for the promotion of improvements in energy efficiency in Great Britain, as regards the period beginning on 1st April 2002 and ending immediately before 1st April 2005, is 62 fuel-standardised terawatt hours.

- (2) The Authority shall—
- (a) subject to subsection (4) requirements, determine by reference to the criteria referred to in paragraph (3), a target for each supplier to which article 2(1) applies; and

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(2) I.e. the Gas and Electricity Markets Authority; see section 66(1) of the 1986 Act which was amended by the Utilities Act 2000 (c. 27), section 108 and Schedule 6 Part II, paragraphs 1 and 22; and section 111(1) of the 1989 Act, which was amended by the Utilities Act 2000, section 108 and Schedule 6 Part II, paragraphs 24 and 40.

(3) 1985 c. 6. Sections 736 and 736A were substituted for the original section 736 by section 144(1) of the Companies Act 1989 (c. 40).

- (b) by notice in writing given to the supplier not later than 31st January 2002, inform it of its target.
- (3) The criteria mentioned in paragraph (2) are—
- (a) the number of the supplier's domestic consumers on 31st December 2001; and
  - (b) the relevant adjustment factor.
- (4) The target to be determined for each supplier to which article 2(4) or (5) applies shall be ascertained, subject to subsection (4) requirements, by—
- (a) calculating the target to which it would have been subject on the assumptions—
    - (i) that it was a supplier to which article 2(1) applied; and
    - (ii) that the number of its domestic consumers on 31st December 2002 or, as the case may be, 31st December 2003, was the number of its domestic consumers on 31st December 2001; and
  - (b) multiplying the resultant figure—
    - (i) in a case to which article 2(4) applies, by  $\frac{2}{3}$ ;
    - (ii) in a case to which article 2(5) applies, by  $\frac{1}{3}$ .
- (5) The Authority shall, by notice in writing given to each supplier to which article 2(4) or (5) applies, inform the supplier of the target determined for it in accordance with paragraph (4) above; and the notice shall be given—
- (a) in the case of a supplier who is subject to an obligation under paragraph (4) of article 2 with effect from 1st April 2003, not later than 31st January 2003;
  - (b) in the case of a supplier who is subject to an obligation under paragraph (5) of article 2 with effect from 1st April 2004, not later than 31st January 2004.
- (6) Each supplier for which a target is to be determined in accordance with paragraph (2) or (4), shall, not later than 10th January preceding each year beginning 1st April in which it is subject to an obligation under article 2, notify the Authority in writing of the number of its domestic consumers on the preceding 31st December.
- (7) For the purposes of this article “relevant adjustment factor” means the percentage shown as applicable to the supplier in question by reference to the number or, as the case may be, the assumed number, of its domestic consumers on 31st December 2001, by reference to graph 1 and, in the case of a supplier of up to 1 million domestic consumers, more particularly by reference to graph 2, set out in Schedule 1 to this Order.

#### **Alteration of energy efficiency targets**

- 4.—(1) Where the number of domestic consumers supplied on 31st December 2002 by a supplier to which paragraph (1) of article 2 applies, differs from the average of—
- (a) the number supplied by that supplier on 31st December 2001; and
  - (b) the number supplied by that supplier on 31st December 2002,
- the Authority shall, so far as consistent with subsection (4) requirements, alter the supplier's target for the period beginning on 1st April 2002 and ending immediately before 1st April 2005.
- (2) Where the number of domestic consumers supplied on 31st December 2003 by a supplier to which paragraph (1) or (4) of article 2 applies, differs from the average of—
- (a) the number supplied by that supplier on 31st December 2002, and
  - (b) the number supplied by that supplier on 31st December 2003,

the Authority shall, so far as consistent with subsection (4) requirements, alter the supplier's target for the period beginning on 1st April 2002 or, in the case of a supplier to which paragraph (4) of article 2 applies, 1st April 2003 and ending immediately before 1st April 2005.

(3) The criteria by reference to which the Authority shall determine the extent to which a supplier's target is altered under paragraph (1) or (2) shall include the number by which—

- (a) the number of domestic consumers supplied by that supplier on 31st December 2002 or, as the case may be, 31st December 2003, is greater or less than the average determined in accordance with paragraph (1) or (2) respectively; and
- (b) the total number of gas suppliers or, as the case may be, electricity suppliers, has increased or decreased, since the supplier's energy efficiency target was last determined.

(4) Where at any time before 31st December 2003, a supplier to which paragraph (1) or (4) of article 2 applies ceases to supply at least 15,000 domestic consumers, it shall forthwith give to the Authority notice in writing to that effect.

(5) Where, at any time before 31st December 2003, a supplier which has given notice under paragraph (4) again becomes the electricity supplier or the gas supplier of more than 15,000 domestic consumers, it shall forthwith give to the Authority notice in writing to that effect.

(6) Where the Authority agrees to any matter referred to in paragraph (1) of article 11, it shall make an appropriate alteration to the target of the supplier or suppliers concerned.

(7) Where the Authority alters the target of a supplier pursuant to any of paragraphs (1), (2) or (6), the Authority shall, by notice in writing to the supplier, inform it of its target as so altered.

### **Additional sources of energy**

5. In the application, for any purpose of this Order, of the definition of "energy efficiency target" in section 33BC(2) of the 1986 Act or section 41A(2) of the 1989 Act, efficiency in the use by consumers of coal, liquid petroleum gas or oil shall also be regarded as energy efficiency(4).

### **Qualifying action**

6.—(1) Subject to paragraph (2), activity (of any description) that produces, or may reasonably be expected to produce, an improvement in energy efficiency is qualifying action.

(2) Activity is not to be regarded as qualifying action unless the supplier by which it is undertaken secures that at least 50 per cent of the energy savings attributable to its total activity is achieved in relation to domestic consumers who are in receipt of at least one of the benefits described in Schedule 2 to this Order.

### **Provision of information by suppliers**

7.—(1) The Authority may, by notice in writing, require a supplier which is for the time being subject to an energy efficiency obligation under this Order to give to the Authority, within such period as may be specified in the notice, such information as to the steps to be taken by the supplier to comply with its obligation as the Authority may reasonably require.

(2) Without prejudice to the generality of paragraph (1), the Authority may require the provision of information as to—

- (a) the supplier's proposals for complying with the requirement referred to in article 6(2);

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(4) By virtue of section 33BC(2) of the 1986 Act and section 41A(2) of the 1989 Act, efficiency in the use by consumers of electricity, and of gas conveyed through pipes, is energy efficiency for the purposes of energy efficiency targets within the meaning of those sections.

- (b) as regards its total activity or, where its total activity consists of a number of schemes, as regards each scheme that it proposes to carry out—
  - (i) the date on which its total activity or the scheme will begin and its duration; or if that date and period are not ascertainable when the information is provided, the estimated date and duration;
  - (ii) an estimate of the energy savings attributable to the total activity or scheme; and
  - (iii) an estimate of the carbon savings attributable to the total activity or scheme;
- (c) an estimate of the cost to its domestic consumers of the total activity; and
- (d) the supplier's proposals (if any) for undertaking energy service action.

### **Determinations by the Authority**

**8.**—(1) The Authority shall determine, with respect to each supplier by which information is provided in accordance with article 7—

- (a) whether the activity proposed is qualifying action, identifying, if only part of the proposed activity is qualifying action, the relevant part; and
- (b) what improvement in energy efficiency is to be attributed to the proposed activity or to any result of that activity or, as the case may be, to the relevant part or to any result of that part, specified in the determination.

(2) Where a supplier provides information as to its proposals for undertaking energy service action, the Authority shall, subject to paragraph (3), for the purposes of paragraph (1)(b) attribute to the qualifying action comprised in that energy service action an improvement in energy efficiency that exceeds by 50 per cent the improvement that may reasonably be expected to be achieved.

(3) The Authority may not make the attribution referred to in paragraph (2) as regards more than 10 per cent of the supplier's target.

(4) The Authority shall give written notice to the supplier of the matters determined under paragraph (1) as soon as reasonably practicable after receipt of information from the supplier under article 7.

(5) For the purposes of this Order, determinations of which notice is given before 1st April 2002 shall be as effective as those of which notice is given on or after that date.

### **Effect of change of supplier**

**9.** Where a domestic consumer in relation to whom qualifying action has been completed, or has been begun, ceases to take his supply from the supplier by whom the action was initiated, the improvements in energy efficiency attributable to that action shall accrue to that supplier; but where the consumer becomes a domestic consumer of another supplier before the completion of the qualifying action, the improvements shall accrue to each supplier in the same proportion as the action taken by each of them bears to the totality of the qualifying action.

### **Information as to compliance**

**10.**—(1) The Authority may, by notice in writing, require a supplier which is at any time between 1 April 2002 and 31 March 2005 subject to an energy efficiency obligation under this Order to give to the Authority, within such period as may be specified in the notice, such information as to the steps taken by the supplier to comply with its obligation as the Authority may reasonably require.

(2) Without prejudice to the generality of paragraph (1), the Authority may require the provision of information as to—

- (a) the steps that the supplier has taken in relation to the total activity or any scheme notified under article 7;
- (b) any material change in the details notified in accordance with article 7(2)(b);
- (c) the energy savings achieved by the total activity or scheme;
- (d) the percentage of those savings that has been achieved in relation to those of its domestic consumers who are in receipt of a benefit described in Schedule 2;
- (e) the carbon savings achieved by the total activity or scheme;
- (f) the cost of the total activity to the supplier's domestic consumers; and
- (g) where the total activity or scheme took the form of the installation of a number of units—
  - (i) the total number of units installed;
  - (ii) the type of dwellings in which the units were installed; and
  - (iii) whether those dwellings were owner-occupied or rented and, if rented, whether from a social landlord or a private landlord.

### **Energy efficiency targets: further provision**

**11.—**(1) A supplier which is for the time being subject to an energy efficiency obligation (“the first supplier”) may, with the written agreement of the Authority—

- (a) treat qualifying action taken by another such supplier (“the second supplier”) as achieving the whole or any part of its target; or
- (b) transfer the whole or any part of its target to the second supplier; or
- (c) subject to paragraph (2), treat action taken by it before 1st April 2002 as qualifying action taken during the period to which this Order relates.

(2) Action taken by a supplier before 1st April 2002 may not be treated as mentioned in paragraph (1)(c) if action of that description has already been so treated and accounts, in aggregate, for more than 10 per cent of the supplier's target.

(3) The Authority shall, in relation to any such agreement as is referred to in paragraph (1), make a record—

- (a) where the circumstances are as mentioned in sub-paragraph (a) of that paragraph—
  - (i) of the identity of the first and second suppliers concerned;
  - (ii) of the nature of the qualifying action concerned;
  - (iii) of the energy savings and carbon savings attributable to that action;
  - (iv) of the extent to which the target of the first supplier is treated as achieved by the qualifying action of the second supplier; and
  - (v) of the extent (if any) to which the target of the second supplier is achieved by the qualifying action;
- (b) where the circumstances are as mentioned in sub-paragraph (b) of that paragraph—
  - (i) of the identity of the first and second suppliers concerned; and
  - (ii) of the extent to which the first supplier's target is transferred to the second supplier;
- (c) where the circumstances are as mentioned in sub-paragraph (c) of that paragraph—
  - (i) of the identity of the supplier concerned;
  - (ii) of the extent to which earlier action is to be treated as qualifying action; and
  - (iii) of the energy savings and carbon savings attributable to that action.

(4) As soon as reasonably practicable after the making of a record under paragraph (3), the Authority shall provide a copy of it—

- (a) where sub-paragraph (a) or (b) of that paragraph applies, to the first and second suppliers concerned; and
- (b) where sub-paragraph (c) of that paragraph applies, to the supplier concerned.

(5) A record made by the Authority under paragraph (3) may be kept in any form and shall be kept for a period of not less than 5 years from the date on which it was compiled.

### **Enforcement of energy efficiency obligations**

**12.**—(1) The requirement imposed on a supplier under paragraph (1), (4) or (5) of article 2 to achieve its energy efficiency obligation shall be treated as a relevant requirement—

- (a) where the supplier is an electricity supplier, for the purposes of Part II of the 1989 Act;
- (b) where the supplier is a gas supplier, for the purposes of Part II of the 1986 Act;
- (c) where the supplier is both an electricity supplier and a gas supplier, for both of those purposes.

(2) In determining whether a supplier has failed to comply with relevant requirements, regard shall be had, in particular—

- (a) to any alteration of its target under article 4; and
- (b) to the terms of any agreement under article 11,

relevant to the period in question for the purposes of Part II of the 1986 Act or Part II of the 1989 Act or, as the case may be, both of those purposes.

### **Information for the Secretary of State**

**13.** The Authority shall, not later than 31st July in each of the years 2003, 2004 and 2005, submit to the Secretary of State a report for the period of 12 months ending on the preceding 31st March; and the report shall contain, as regards each supplier which, in any part of the period to which the report relates, was subject to an energy efficiency obligation under this Order, particulars of—

- (a) the progress, in the period in question, towards the achievement of the supplier's target;
- (b) the schemes completed during the period;
- (c) the proposed schemes of which notice has been given to the Authority since its last report under this article; and
- (d) the means by which the requirement referred to in article 6(2) has been or, as the case may be, is to be met.

Signed by authority of the Secretary of State for Environment, Food and Rural Affairs

Minister of State,  
Department for Environment, Food and Rural  
Affairs

2001