Draft Order laid before Parliament under section 33BC(12) and 33BD(4) of the Gas Act 1986, section 41A(12) and 41B(4) of the Electricity Act 1989 and section 103(5) and 103A(6) of the Utilities Act 2000, for approval by resolution of each House of Parliament. This draft statutory instrument supersedes the draft Electricity and Gas (Energy Company Obligation) Order 2012 which was laid before Parliament on 13th June 2012 and published on 18th June 2012. It is being issued free of charge to all known recipients of that Statutory Instrument.

DRAFT STATUTORY INSTRUMENTS

2012 No. 0000

ELECTRICITY
GAS

The Electricity and Gas (Energy Companies Obligation) Order 2012

Made - - - - xx 2012

Coming into force in accordance with article 1

The Secretary of State makes this Order in exercise of the powers conferred by section 33BC and 33BD of the Gas Act 1986(**1**), section 41A and 41B of the Electricity Act 1989(**2**), section 103 and 103A of the Utilities Act 2000(**3**).

The Secretary of State has consulted the Gas and Electricity Markets Authority, the National Consumer Council(**4**), electricity generators, electricity distributors, electricity suppliers, gas transporters, gas suppliers and such other persons as the Secretary of State considers appropriate.

A draft of this instrument has been approved by a resolution of each House of Parliament pursuant to section 33BC(12) and 33BD(4) of the Gas Act 1986, section 41A(12) and 41B(4) of the Electricity Act 1989 and section 103(5) and 103A(6)of the Utilities Act 2000.

(**1**) 1986 c.44. Section 33BC was inserted (as section 33BB) by section 10(1) of, and Schedule 3, paragraph 36 to, the Gas Act 1995 (c.45). Section 33BB was substituted for (and renumbered as) section 33BC by section 99 of the Utilities Act 2000 (c.27). This section was also amended by sections 15 and 17 of, and paragraphs 1 and 2 of the Schedule to, the Climate Change and Sustainable Energy Act 2006 (c.19) and section 79 of, and paragraph 1 of Schedule 8 to, the Climate Change Act 2008 (c.27). Section 66 of the Energy Act 2011 (c.16) also amends this section. Section 33BD was inserted by section 68 of the Energy Act 2011.

(**2**) 1989 c.29. Section 41A was substituted for section 41 by section 70 of the Utilities Act 2000 (c.27) and amended by sections 16 and 17 of, and paragraphs 4 and 5 of the Schedule to, the Climate Change and Sustainable Energy Act 2006 (c.19) and section 79 of, and paragraphs 2 to 5 of Schedule 8 to, the Climate Change Act 2008 (c.27). Section 67 of the Energy Act 2011 (c.16) also amends this section. Section 41B was inserted by section 69 of the Energy Act 2011.

(**3**) 2000 c.27. This section was amended by section 17 of, and paragraph 7 to, the Climate Change and Sustainable Energy Act 2006 (c.19) and section 79 of, and paragraph 6 of Schedule 8 to, the Climate Change Act 2008 (c.27). This section has also been amended by section 72 of, and paragraph 7 and 8 to the Schedule, the Energy Act 2011 (c.16). Section 103A was inserted by section 70 of the Energy Act 2011.

(**4**) The National Consumer Council replaced the Gas and Electricity Consumer Council, see section 30 of the Consumer, Estate Agents and Redress Act 2007 (c.17).

PART 1

Introduction

Citation and commencement

1. This Order may be cited as the Electricity and Gas (Energy Companies Obligation) Order 2012 and comes into force on the day after the day on which this Order is made.

Interpretation

2. In this Order—

"adjoining installation" has the meaning given in article 14(2);

"Administrator" means the Gas and Electricity and Markets Authority established by section 1 of the Utilities Act 2000;

"affordable warmth group" means a group of persons in receipt of the benefits in Schedule 1;

"area of low income" means an area in Great Britain which is described as an area of low income in the document entitled "Energy Company Obligation, Carbon Saving Community Obligation: Rural and Low Income Areas", first published on 12th June 2012 and revised on 29th October 2012 and the ISBN of which is 9870108511608;

"carbon qualifying action" has the meaning given in article 12(3);

"carbon saving" means the lifetime tonnes of carbon dioxide that a qualifying action will save;

"carbon saving community qualifying action" has the meaning given in article 13(5);

"cost saving" means, in relation to a heating qualifying action,—

(a) the heating saving; and

(b) where in addition to a heating saving the action also results in savings in the cost of heating water, the money that would be saved by the action over its expected lifetime in heating water in that home;

"district heating system" means a system that delivers heat through pipes or conduits to two or more domestic premises;

"domestic customer" means a person living in domestic premises in Great Britain who is supplied with electricity or gas at those premises wholly or mainly for domestic purposes;

"domestic energy user" means a person who uses energy in domestic premises in Great Britain wholly or mainly for domestic purposes and includes a person living in a mobile home;

"dual licence-holder" means a person holding a licence under section 6(1)(d) of the Electricity Act 1989(**5**) and a licence under section 7A of the Gas Act 1986(**6**);

"electricity licence-holder" means a person holding a licence under section 6(1)(d) of the Electricity Act 1989 who does not also hold a licence under section 7A of the Gas Act 1986;

"excess action" has the meaning given by article 21;

(**5**) 1989 c.29; section 6 was amended by the Utilities Act 2000 (c.27), section 30, by the Energy Act 2004 (c.20), sections 89(3), 136(1) and (2), 143(1), 145 and 197(9), Schedule 19, paragraphs 3 and 5, and Schedule 23, Part 1, by the Climate Change Act 2008 (c.27), section 78 and Schedule 8, paragraph 2, by the Energy Act 2011 (c.16), section 72 and Schedule 1, paragraphs 2 and 3, and by S.I. 2011/2704, regulation 19.

(**6**) 1986 c.44; section 7A was inserted by the Gas Act 1995 (c.45), section 6(1), and has been amended by the Utilities Act 2000 (c.27), sections 3(2) and 108, and Schedule 6, and by the Energy Act 2004 (c.20), section 149(1) and (7).

"gas licence-holder" means a person holding a licence under section 7A of the Gas Act 1986 who does not also hold a licence under section 6(1)(d) of the Electricity Act 1989;

"glazing measure" means the installation of secondary or replacement glazing;

"Green Deal report" means a report produced by a green deal assessor pursuant to a qualifying assessment in accordance with regulation 7 of the Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012(**7**);

"group company" means a licence-holder which is a member of a group of companies; and "group" refers to the group of companies of which the licence-holder is a member;

"group of companies" means a holding company and the wholly-owned subsidiaries of that holding company where "holding company" and "wholly-owned" subsidiary have the same meaning as in section 1159 of the Companies Act 2006(**8**);

"hard to treat cavity" means—

(a) a cavity wall—

  (i) in a building with 3 or more storeys where each storey has cavity walls;

  (ii) which a chartered surveyor has reported is not suitable to insulate with standard insulation material or techniques; or

  (iii) which a chartered surveyor has reported is not suitable to insulate without substantial remedial works to the building;

(b) a cavity within a cavity wall which is less than 50mm wide;

(c) a cavity found in homes of prefabricated concrete construction or with metal frame cavity walls; or

(d) an uneven cavity formed in walls constructed of natural stone or from natural stone outer leaf and block or brick inner leaf;

"heating qualifying action" has the meaning given in article 15(3);

"heating saving" means, in relation to a heating qualifying action or an excess action, the money that would be saved by that action over its expected lifetime in heating a home to 21 degrees Celsius in the main living areas and 18 degrees Celsius in all other areas;

"householder" has the meaning given in Schedule 2;

"licence-holder" means an electricity licence-holder, a gas licence-holder or a dual licence-holder;

"lifetime tonnes of carbon dioxide" means the amount in tonnes of carbon dioxide that is expected to be saved over the lifetime of a measure installed under this Order;

"mobile home" means a home which is—

(a) a caravan within the meaning of Part I of the Caravan Sites and Control of Development Act 1960(**9**) (disregarding the amendment made by section 13(2) of the Caravan Sites Act 1968(**10**)); and

(b) used as a dwelling for the purposes of Part I or II of the Local Government Finance Act 1992(**11**);

"$MtCO_2$" means million lifetime tonnes of carbon dioxide;

"new supplier" has the meaning given in article 4(3);

(**7**) S.I. 2012/2079.
(**8**) 2006 c.46.
(**9**) 1960 c.62.
(**10**) 1968 c.52.
(**11**) 1992 c.14.

"notification period" means—

(a) 1st January 2011 to 31st December 2011 for phase 1;

(b) 1st January 2012 to 31st December 2012 for phase 2;

(c) 1st January 2013 to 31st December 2013 for phase 3,

and references in this Order, in relation to a phase, to the relevant notification period is to the notification period for that phase;

"overall obligation period" has the meaning given in article 6;

"phase" means one of the three phases as follows—

(a) the period beginning with 1st January 2013 and ending with 31st March 2013 ("phase 1");

(b) the twelve months ending with 31st March 2014 ("phase 2"); and

(c) the twelve months ending with 31st March 2015 ("phase 3");

"Publicly Available Specification" means the Publicly Available Specification 2030:2012(**12**);

"qualifying action" means a carbon qualifying action, a carbon saving community qualifying action or a heating qualifying action;

"qualifying boiler" means—

(a) in the case of a boiler to be repaired, a boiler which the Administrator is satisfied—

(i) is not functioning efficiently or has broken down; and

(ii) has a seasonal energy efficiency value of not less than 86% when assessed against the Standard Assessment Procedure;

(b) in the case of a boiler to be replaced, a boiler which the Administrator is satisfied—

(i) a boiler which is not functioning efficiently; or

(ii) a boiler which has broken down,

and which cannot be economically repaired;

"qualifying supply" means the supply to domestic customers of 400 gigawatt hours of electricity or 2000 gigawatt hours of gas;

"recommended measure" means a measure—

(a) recommended in a Green Deal report which has been produced in respect of a domestic energy user's premises; or

(b) recommended in a report by a chartered surveyor pursuant to an assessment of the domestic energy user's premises performed for the purpose of identifying measures for improving the energy efficiency of the premises;

"Reduced Data Standard Assessment Procedure" means the Government's Reduced Data Standard Assessment Procedure for energy ratings of dwellings (2009 Edition, as amended in April 2012, version 9.91)(**13**);

"relevant in-use factor" means—

(**12**) The Specification is designed for installing, managing and providing energy efficiency measures in existing buildings. A copy can be obtained from any of the sales outlets operated by the British Standards Institute or by post from the British Standards Institute, 389 Chiswick High Road, London, W4 4AL . See http://shop.bsigroup.com/en/Browse-By-Subject/Environmental-Management-and-Sustainability/Green-Deal/.

(**13**) The Government's Reduced Data Standard Assessment Procedure for Energy Rating of Dwellings (2009 Edition, incorporating RdSAP 2009) can be found at http://www.bre.co.uk/filelibrary/SAP/2009/SAP-2009_9-90.pdf. A copy can be inspected at the Department of Energy and Climate Change, 3 Whitehall Place, London SW1A 2AW. For a summary of the changes made in version 9.91 see, http://www.bre.co.uk/filelibrary/SAP/2009/RdSAP_amendments_2012.pdf.

(a) where a measure is specified in the first column of the table in Schedule 3, the percentage specified for that measure in the second column of that table; or

(b) in all other cases, 15%;

"relevant year" means 2011, 2012 or 2013;

"solid wall insulation" means—

(a) internal or external insulation which lowers the U-value of the treated walls to 0.30W/m^2K or less; or

(b) in the case of a mobile home, internal or external insulation applied to the ceiling, floor or walls which lowers the U-value of those parts of the mobile home to which the insulation is applied;

"a specified adjoining area" means, where an area of low income ("area A") is—

(a) in England or Wales, an area (if any) adjoining area A which is specified as a "Lower Layer Super Output Area" by the Office of National Statistics for England and Wales, in a document entitled "Mid-2010 Population Estimates for Lower Layer Super Output Areas in England and Wales by Broad Age and Sex" (release date 28th September 2011)(**14**); or

(b) in Scotland, an area (if any) adjoining area A which is specified by the Scottish Executive as a "Datazone" in a document entitled "SMID Datazone Lookup" (version 3 published on 6th March 2012)(**15**);

"Standard Assessment Procedure" means the Government's Standard Assessment Procedure for energy rating of dwellings (2009 Edition, as amended in October 2010)(**16**);

"supplier" has the meaning given in article 4;

"total carbon emissions reduction obligation" means the sum total of carbon emissions reduction obligations which have been determined for a supplier in respect of phases 1, 2 and 3;

"total carbon saving community obligation" means the sum total of carbon savings community obligations which have been determined for a supplier in respect of phases 1, 2 and 3;

"total home heating cost reduction obligation" means the sum total of home heating cost reduction obligations which have been determined for a supplier in respect of phases 1, 2 and 3;

"U-value" means the measure in W/m^2K of heat transmission through material;

"working day" means any day other than—

(a) a Saturday, Sunday, Good Friday, or Christmas Day; or

(b) a day which is a bank holiday in England and Wales or Scotland under the Banking and Financial Dealings Act 1971(**17**).

(**14**) The document referred to can be found on the website for the Office of National Statistics: http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-230902. A copy can be inspected at the Department of Energy and Climate Change, 3 Whitehall Place, London SW1A 2AW.

(**15**) http://www.scotland.gov.uk/Topics/Statistics/SIMD/SIMDQuickLookup. A copy can be inspected at the Department of Energy and Climate Change, 3 Whitehall Place, London, SW1A 2AW.

(**16**) The Government's Standard Assessment Procedure for Energy Rating of Dwellings (2009 Edition) can be found at http://www.bre.co.uk/filelibrary/SAP/2009/SAP-2009_9-90.pdf. A copy can be inspected at the Department of Energy and Climate Change, 3 Whitehall Place, London, SW1A 2AW.

(**17**) 1971 c.80.