Draft Order laid before Parliament under section 33BC(12) of the Gas Act 1986, section 41A(12) of the Electricity Act 1989 and section 103(5) of the Utilities Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2004 No.

ELECTRICITY, GAS

The Electricity and Gas (Energy Efficiency Obligations) Order 2004

Made - - - -	*2004*
Coming into force - -	*2004*

Having consulted the Gas and Electricity Markets Authority, the Gas and Electricity Consumer Council, gas transporters, gas suppliers, electricity distributors, electricity suppliers and such other persons as she considers appropriate, the Secretary of State, in exercise of the powers conferred upon her by section 33BC of the Gas Act 1986(**1**), section 41A of the Electricity Act 1989(**2**) and section 103 of the Utilities Act 2000(**3**), makes the following Order:

Title, commencement and interpretation

1.—(1) This Order may be cited as the Electricity and Gas (Energy Efficiency Obligations) Order 2004 and shall come into force on the day after the day on which it is made.

(2) In this Order—

"domestic consumer" means a person who uses coal, electricity, gas, liquid petroleum gas or oil at domestic premises in Great Britain wholly or mainly for domestic purposes;

"domestic customer" means an owner or occupier of domestic premises in Great Britain who is supplied with electricity or gas at those premises wholly or mainly for domestic purposes;

"energy efficiency" includes efficiency in the use by consumers of coal, liquid petroleum gas or oil;

"fuel-standardised" means, in respect of an improvement in energy efficiency, the number of kilowatt hours(**4**) of improvement multiplied–

(i) where the source of energy is coal, by 0.557;

(**1**) 1986 c. 44.
(**2**) 1989 c. 29.
(**3**) 2000 c. 27.
(**4**) Section 48(1) of the Gas Act 1986 defines "kilowatt hour" as 3.6 megajoules.

(ii) where the source of energy is electricity, by 0.801;

(iii) where the source of energy is gas, by 0.353;

(iv) where the source of energy is liquid petroleum gas, by 0.398; or

(v) where the source of energy is oil, by 0.464;

"lifetime-discounted" means, in respect of an improvement in energy efficiency, the number of kilowatt hours of improvement discounted by 3.5% a year over its lifetime (as estimated by the Authority under article 6(1)(a)(ii));

"supplier" means an electricity supplier or a gas supplier who supplies at least 50,000 domestic customers (including those supplied by his holding company or subsidiary or by any subsidiary of such a holding company, where "holding company" and "subsidiary" have the same meaning as in section 736 of the Companies Act 1985(**5**));

"priority group" means persons–

(i) who are in receipt of at least one of the benefits described in paragraph 2 of the Schedule to this Order; or

(ii) who are in receipt of at least one of the credits described in paragraph 3 of that Schedule and whose relevant income is £14,600 or less (where "relevant income" has the same meaning as in Part 1 of the Tax Credits Act 2002(**6**)); and

"qualifying action" means an action determined by the Authority under article 5(1)(b) as promoting an improvement in energy efficiency.

(3) For the purposes of this Order–

(a) a person who ceases to be a supplier after 31st December 2004 but who continues to hold a supply licence under section 6(1)(d) of the Electricity Act 1989 or section 7A of the Gas Act 1986 shall continue to be treated as a supplier; and

(b) a reference to notification is a reference to notification in writing and includes notification by electronic mail, facsimile or similar means.

Overall target

2. 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 relation to domestic consumers as regards the period from 1st April 2005 to 31st March 2008 is 130 fuel-standardised, lifetime-discounted terawatt hours(**7**).

Energy efficiency obligations

3.—(1) To comply with his energy efficiency obligation a supplier must achieve the latest energy efficiency target determined for him by the Authority under article 4 by 31st March 2008.

(2) A supplier's energy efficiency target must be met by improvements in energy efficiency attributable to qualifying actions, where at least 50% of the total improvement in energy efficiency attributed to those actions under article 6 is to be achieved in relation to domestic consumers in the priority group.

(**5**) 1985 c. 6. Sections 736 and 736A were substituted for the original section by section 736 by section 144(1) of the Companies Act 1989 (c. 40).
(**6**) 2002 c. 21. See in particular section 7(3).
(**7**) A terawatt hour is 1,000 million kilowatt hours.

Energy efficiency targets

4.—(1) The Authority–

(a) shall determine an energy efficiency target to be achieved by a supplier–

(i) if he is a supplier on 31st December 2004, from 1st April 2005;

(ii) if he becomes a supplier after 31st December 2004 and is a supplier on 31st December 2005, from 1st April 2006; or

(iii) if he becomes a supplier after 31st December 2005 and is a supplier on 31st December 2006, from 1st April 2007;

(b) may alter that target with effect from 1st April 2006 or 1st April 2007; and

(c) by 31st January 2005, 31st January 2006 and 31st January 2007, shall notify the supplier of the target to be achieved by him as determined or altered from the 1st April of that year.

(2) The Authority shall determine or alter a supplier's energy efficiency target by reference to the following criteria–

(a) the overall target under article 2;

(b) the mean of the total number of domestic customers supplied by suppliers on 31st December 2004 and on any anniversary of that date;

(c) the mean of the number of domestic customers supplied by him on 31st December 2004 and on any anniversary of that date; and

(d) the time available for its achievement.

(3) By 14th January 2005, 14th January 2006 and 14th January 2007 a supplier shall notify the Authority of the number of domestic customers supplied by him on the preceding 31st December.

Qualifying actions

5.—(1) The Authority shall–

(a) approve an action notified under paragraph (2)(a) if it is satisfied that the action would promote an improvement in energy efficiency in relation to domestic consumers, and estimate what improvement in energy efficiency would be attributable to that action; and

(b) after it has been notified under paragraph (2)(b), determine whether the action promotes such an improvement and if so what improvement is to be attributed to it under article 6,

and shall notify the supplier accordingly.

(2) Subject to paragraph (3), a supplier shall notify the Authority–

(a) before or within one month of its commencement, of any action by him which he intends is to qualify for the purpose of meeting the whole or part of his energy efficiency target, indicating how the action would contribute, if at all, to the achievement of the requirement in article 3(2) in relation to domestic consumers in the priority group; and

(b) by 30th April 2008, whether an action approved under paragraph (1)(a) has been taken.

(3) Before 1st May 2005 an action taken or begun by a supplier during the period from 1st April 2002 to 31st March 2005 may be notified under paragraph (2) if no improvement in energy efficiency attributable to that action has been counted towards an energy efficiency target under the Electricity and Gas (Energy Efficiency Obligations) Order 2001(**8**).

(4) For the purposes of this article, the promotion of the supply to domestic 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;

(**8**) S.I.2001/4011, as amended by S.I. 2003/1180.

(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 promotion of improvements in energy efficiency.

Improvements in energy efficiency

6.—(1) Subject to paragraph (2), the Authority shall determine—

(a) the improvement in energy efficiency, assessed in fuel-standardised, lifetime-discounted kilowatt hours, to be attributed to a qualifying action by reference to–

(i) the improvement in energy efficiency in relation to domestic consumers which it is satisfied will result from that action; and

(ii) its estimate of the lifetime of that improvement, and

(b) the amount, if any, of that improvement which it is satisfied will be achieved in relation to domestic consumers in the priority group.

(2) The Authority shall attribute an improvement in energy efficiency which is 50% higher than the improvement which would otherwise be attributed under paragraph (1)–

(a) to an energy service action, provided that the total improvement in energy efficiency that would otherwise be attributed to such actions under paragraph (1) in relation to the supplier's energy efficiency target would achieve at least 5% and no more than 10% of that target;

(b) to an innovative action, provided that the total improvement that would otherwise be attributed to such actions under paragraph (1) in relation to the supplier's energy efficiency target would achieve no more than 10% of that target.

(3) For the purposes of this article—

(a) "energy service action" means a qualifying action undertaken in pursuance of an agreement between a supplier and a domestic consumer which is intended to achieve improvements in energy efficiency at the domestic premises concerned by at least 13%, where that agreement requires the supplier–

(i) to undertake an energy efficiency audit of the premises; and

(ii) to offer the consumer the option of making an arrangement with the supplier for deferring the whole or any part of the cost incurred by the consumer under the agreement;

(b) "innovative action" means a qualifying action which is not energy service action and which —

(i) achieves an improvement in energy efficiency–

(aa) by a means which was not used in respect of an action by any supplier which was determined by the Authority as a qualifying action under article 8(1)(a) of the Electricity and Gas (Energy Efficiency Obligations) Order 2001, and

(bb) which the Authority is satisfied is significantly greater than that achieved by any similar action so determined; or

(ii) achieves an improvement in energy efficiency through the use of a micro-cogeneration unit, as defined in Article 3(m) of Directive 2004/8/EC of the European Parliament and of the Council on the promotion of cogeneration based on a useful heat demand in the internal energy market(**9**).

(**9**) O.J. L 52, 21.2.2004, p. 50.