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

2001 No.

ELECTRICITY
GAS

The Electricity and Gas (Energy Efficiency Obligations) Order 2001

Made - - - -	*2001*
Coming into force - -	*2001*

The Secretary of State for Environment, Food and Rural Affairs(**1**), in exercise of the powers conferred upon her by section 33BC(1) of the Gas Act 1986(**2**), section 41A of the Electricity Act 1989(**3**) and section 103(1) of the Utilities Act 2000(**4**), having consulted the Gas and Electricity Markets Authority, the Gas and Electricity Consumer Council, gas transporters, gas suppliers, electricity distributors and electricity suppliers, and other persons with whom she considered consultation to be appropriate(**5**), and having had regard to the matters specified in section 33BC(4) of the Gas Act 1986 and section 41A(4) of the Electricity Act 1989, hereby makes the following Order, of which a draft has been laid before, and approved by Resolution of, each House of Parliament:

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;

(**1**) The functions to which this Order relates were entrusted to the Secretary of State for the Environment, Transport and the Regions immediately before 7th June 2001 and were entrusted to the Secretary of State for Environment, Food and Rural Affairs before the making of the Secretaries of State for Transport, Local Government and the Regions and for Environment Food and Rural Affairs Order 2001 (S.I.2001/2568). See, in particular, article 12 of that Order (supplementary provision for continuity).

(**2**) 1986 c. 44. Section 33BC was substituted for section 33BB by the Utilities Act 2000 (c. 27), section 99.

(**3**) 1989 c. 29. Section 41A was substituted for section 41 by the Utilities Act 2000, section 70.

(**4**) 2000 c. 27.

(**5**) *See* section 33BC(11) of the Gas Act 1986, section 41A(11) of the Electricity Act 1989, and section 103(4) of the Utilities Act 2000.

"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"(**6**),

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

  (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;

(**6**) 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.**

"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(**7**) 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—

(**7**) 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.

(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(**8**).

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

(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—

(**8**) 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).

(i) in a case to which article 2(4) applies, by ⅔;

(ii) in a case to which article 2(5) applies, by ⅓.

(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.