



ENERGY BILL 2022 EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Hon. Clare Barber MHK.

INTRODUCTION

1. These explanatory notes relate to the Energy Bill 2022. They have been prepared by the Department of Environment, Food and Agriculture (DEFA) in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
2. The notes need to be read in conjunction with the Bill. They are not meant to be a comprehensive description of the Bill.

SUMMARY AND BACKGROUND

3. The Energy Bill 2022 is being introduced in the context of abnormally high global energy prices, which have imposed significant financial strains on energy suppliers. A reliable supply of energy is a fundamental underpinning of our society and its absence would impose substantial social and economic costs. The Bill will help provide additional powers to the Council of Ministers, as well as strengthen an existing one, to help ensure continuity of supply. It is not intended that the powers within this Bill are to be used widely, rather that they exist as a last resort, at Council's discretion and with the approval of Tynwald.
4. The primary function of the Bill is to enable the transposition of UK legislation that facilitates the use of Energy Supply Company Administration Orders ("ESCAOs"). In the UK, these orders allow financially distressed energy suppliers to be placed into a form of special administration, whereby the administrator has a duty to ensure continuity of supply (at the lowest possible cost).
5. The Bill contains a clause that will allow the Department to apply and modify the necessary UK energy-related legislation. However, it should be noted, it is simply an enabling Bill that provides the means to introduce the relevant legislation but does not specifically establish the ESCAO process in practice. The intention is to subsequently develop secondary legislation in order to adapt the UK legislative basis and implementation of ESCAOs, ensuring that they can function effectively in practice in the legislative landscape of our jurisdiction.
6. A secondary purpose to the Bill relates to strengthening emergency powers related to gas supply. Section 7 (regulation of supply of gas) of the Energy Act 1980 permits the Council of Ministers to "regulate" the supply of gas to consumers in the Island.

This can be reasonably interpreted as enabling Council to assume control of a supplier's assets in order to ensure that public supply of gas continues, meeting this vital society need in an emergency context. The Bill further clarifies and strengthens this power, through an amendment of Section 7. In doing so, it also places new constraints on Council's actions, by requiring them to pay reasonable compensation to the supplier, specify the duration of control and seek Tynwald approval.

7. Finally, the Bill also makes an amendment to the Gas Regulation Act 1995, to resolve a procedural inconsistency that has arisen since the powers of CURA were defined when the Act was amended by the Gas Regulation (Amendment) Act 2021.

EUROPEAN CONVENTION ON HUMAN RIGHTS

8. In the opinion of the member moving the Bill, the provisions of the Energy Bill 2022 are compatible with Convention rights.

FINANCIAL EFFECTS OF THE BILL

9. In the view of the member moving the Bill, it is not expected to have any direct human or financial resource implications. However, should secondary legislation made under the Bill introduce a system of ESCAOs, it would have significant financial consequences as in practice they require Treasury intervention to fund the continued operation of the energy supplier. Any such legislation will require Treasury concurrence and Tynwald approval.

NOTES ON CLAUSES

10. Further to the long title set out in the preamble to the Bill, which describe the Bill's contents, **clause 1 (short title)** gives the Bill its short title.
11. **Clause 2 (commencement)** provides that sections 1 and 2 will commence upon the day on which the Act is passed. The remaining provisions will commence upon the making of an appointed day order (or orders) by the Council of Ministers subject to such consequential, incidental, supplemental and transitional provisions as appear necessary or expedient.
12. **Clause 3 (application to the Island of Acts of Parliament etc.)** of the Bill enables the Department, by order approved by Tynwald, to apply any provision of energy-related UK primary or secondary legislation to the Island. When legislation is applied, the order may make consequential amendments to, or repeal, existing domestic legislation to allow the applied legislation to function.

Such an order may specify the exceptions, adaptation and modifications that have been made to the UK legislation when applying it to the Island.
13. **Clause 4 (amendment of the Energy Act 1980)** amends section 7 of the Energy Act 1980.

A new subsection (2) is inserted to clarify that the existing power of the Council of Ministers to regulate, by order, the supply of gas to consumers in the Island includes

the power to temporarily assume control of a public gas supplier's assets (by Council or a third party on Council's terms) for the purpose of supplying gas to the Island's consumers. Such an order will require Tynwald approval before it can come into operation.

Where control of a supplier's assets is assumed, the Council of Ministers must state in the order either the date that the assets will be returned to the supplier or how that date is to be determined. In addition, the Council of Ministers must pay reasonable compensation to the supplier for the period that Council (or a third party) is in control of the supplier's assets.

A consequential amendment is also made to section 10(1) as a result of orders made under the amended section 7 now requiring Tynwald approval.

14. **Clause 5 (amendment of the Gas Regulation Act 1995)** amends section 16 of the Gas Regulation Act 1995.

The current section 16(8) of the Act indicates that legislation (other than an appointed day order) made under it is subject to the affirmative resolution Tynwald procedure (i.e. they may start to operate prior to Tynwald approval but would cease to have effect if Tynwald failed to approve them at subsequent sittings). However, CURA regulations under section 6(2) must be approved by Tynwald prior to their commencement. This amendment to the Gas Regulation Act 1995 will clarify that such regulations require Tynwald approval.