

ENERGY BILL 2022

Explanatory Memorandum

1. This Bill is promoted by Hon. Clare Barber, M.H.K. on behalf of the Department of Environment, Food and Agriculture (“the Department”).
2. *Clauses 1 and 2* contain, respectively, the short title of, and the commencement provisions for, the resulting Act.
3. *Clause 3* empowers the Department to by order apply to the Island as part of the law of the Island any legislation of the United Kingdom (“UK”) pertaining to energy. The application of such UK legislation may be made subject to such exceptions, adaptations and modifications as the Department may think fit. Any such exceptions, etc. may be set out in the order and the text of the applied UK legislation incorporating the exceptions, etc. may be annexed to the order. Such an order may make necessary amendments to any Manx enactment other than the Act resulting from this Bill and is to be subject to Tynwald approval.
4. *Clause 4* amends section 7 of the *Energy Act 1980* so as to expressly declare that the Council of Ministers’ power to “by order regulate ... the supply of gas to consumers in the Island” includes the power to requisition the assets of a public gas supplier in order to enable the Council of Ministers to either itself supply gas to consumers in the Island or authorise someone else to do so *via* use of the requisitioned assets. It is expressly provided that a requisition is temporary and the Council of Ministers is required to specify in the order either precisely when the requisitioned assets will be returned to the owner or the eventuality that will give rise to the obligation to so return the assets. The clause imposes on the Council of Ministers an obligation to pay reasonable compensation to the owner of requisitioned assets. The final amendment *clause 4* makes to section 7 subjects an order made under that section to Tynwald approval. As a result of this, *clause 4* makes a consequential amendment to section 10(1) of the same Act so as to insert an exception for orders under section 7. The effect of this exception is to remove the conflict that would otherwise be created by (on the one hand) the stipulation in section 10(1) that the affirmative procedure applies to virtually all orders under the Act and (on the other hand) the proposed insertion of the stipulation that Tynwald approval is required for orders made under section 7.
5. *Clause 5* amends section 16(8) of the *Gas Regulation Act 1995* to belatedly address an issue equivalent to that addressed by *clause 4* in respect of section 10(1) of the *Energy Act 1980*. The purpose of the amendment is to remove the conflict occasioned by the recent amendment of the *Gas Regulation Act 1995* that empowered the Communications and Utilities Regulatory Authority (“CURA”) to set parameters within which tariffs may be set by a public gas supplier. The provision which so empowers CURA expressly states that regulations made

under it are subject to Tynwald approval. However, the pre-existing section 16(8) states that every public document made under the Act (with the exception of the appointed day order) is subject to the affirmative procedure. *Clause 5* therefore removes the conflict by inserting in section 16(8) an exception from the application of the affirmative procedure to the CURA-empowering provision.

6. The resulting Act is not expected to have any financial or human resource implications.
7. In the opinion of the member moving the Bill, the Bill's provisions are compatible with the Convention rights within the meaning of the *Human Rights Act 2001*.



Ellan Vannin

ENERGY BILL 2022

- 1 **A BILL** to provide for the application to the Island by order of United Kingdom
2 legislation pertaining to energy; to amend the Energy Act 1980; to amend the
3 Gas Regulation Act 1995; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

4 **1 Short title**

5 The short title of this Act is the Energy Act 2022.

6 **2 Commencement**

- 7 (1) This Act (except section 1 and this section) will come into operation on
8 such day or days as the Council of Ministers may by order appoint.
- 9 (2) An order under subsection (1) may make such consequential, incidental,
10 supplemental and transitional provisions as appear to the Council of
11 Ministers to be necessary or expedient for the purposes of the order.

12 **3 Application to the Island of Acts of Parliament etc.**

13 [2000/05/1 and drafting]

- 14 (1) The Department of Environment, Food and Agriculture may by order
15 apply to the Island as part of the law of the Island, subject to such
16 exceptions, adaptations and modifications as may be specified in the
17 order, —
- 18 (a) the Energy Act 2011 (of Parliament);
19 (b) the Energy Act 2004 (of Parliament);
20 (c) any other legislation pertaining to energy that has been enacted or
21 made in the United Kingdom.
- 22 Tynwald procedure – approval required.
- 23 (2) An order under subsection (1) may include provision repealing or
24 amending any provision of an enactment (other than this Act) which is
25 inconsistent with, or is unnecessary or requires modification in

consequence of, the order or any legislation of the United Kingdom applied to the Island by order.

- (3) An order under subsection (1) may do all or any of the following —
- (a) specify the exceptions, adaptations and modifications subject to which the legislation of the United Kingdom applies to the Island;
 - (b) set out the legislation of the United Kingdom applied by the order, incorporating the exceptions, adaptations and modifications subject to which it applies to the Island;
 - (c) in the case of an order applying legislation of the United Kingdom which amends previous legislation of the United Kingdom applied to the Island, set out the previous legislation so applied as amended, incorporating the exceptions, adaptations and modifications subject to which that legislation applies to the Island.

4 Amendment of the Energy Act 1980

(1) The *Energy Act 1980* is amended as follows.

(2) In section 7 —

- (a) number the existing text as subsection (1); and
- (b) immediately after the existing text, insert the following —

“(2) Without limiting subsection (1), the Council of Ministers may, in exercise of the power in that subsection, temporarily assume control of any asset of a public gas supplier for the purpose of —

- (a) the Council of Ministers’ using the asset in the course of itself supplying gas to consumers in the Island; or
- (b) making the asset available to a third party, on such terms as the Council of Ministers agrees with the third party, for the third party’s use in supplying gas to consumers in the Island as so authorised by the Council of Ministers.

(3) Where the Council of Ministers exercises the power in subsection (1) in the manner described in subsection (2), the Council of Ministers must —

- (a) include in the order provision that either —
 - (i) specifies the date on which —
 - (A) control of the asset will be returned to the public gas supplier; and
 - (B) the public gas supplier will thereupon resume responsibility for supplying gas to consumers in the Island; or

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(ii) specifies how the date referred to in subparagraph (i) is to be ascertained; and

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(b) pay reasonable compensation to the public gas supplier for the period during which, pursuant to the order, the public gas supplier will have been divested of control of the asset.

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(4) In this section, “**public gas supplier**” has the meaning given in section 17(1) of the *Gas Regulation Act 1995*.

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(5) An order made under this section cannot come into operation unless it has been approved by Tynwald.”.

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(3) In section 10(1), for “(except an order under section 15(2))” substitute “(except an order under section 7 and an order under section 15(2))”.

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5 Amendment of Gas Regulation Act 1995

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(1) The *Gas Regulation Act 1995* is amended as follows.

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(2) In section 16(8), for “(with the exception of an order under section 20)” substitute “(with the exception of regulations under section 6(2) and an order under section 20)”.

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IN THE KEYS

ENERGY BILL 2022

A **BILL** to provide for the application to the Island by order of United Kingdom legislation pertaining to energy; to amend the Energy Act 1980; to amend the Gas Regulation Act 1995; and for connected purposes

Leave to introduce given by the Council on 1 June 2022.

MRS BARBER

28 JUNE 2022