

SCHEDULES

SCHEDULE 6

Section 38

COMMUNITY ELECTRICITY RIGHT REGULATIONS

PART 1

THE RIGHT TO BUY

“Right to buy regulations”

- 1 In this Schedule “right to buy regulations” means regulations under subsection (1) of section 38.

Kinds of facilities in relation to which right to buy exercisable

- 2 (1) Right to buy regulations must specify the kind, or kinds, of renewable electricity generation facilities in relation to which the right to buy is to be exercisable.
- (2) The regulations must secure that the right to buy is not to be exercisable in relation to a renewable electricity generation facility if the total installed capacity of the facility is expected to be less than 5 megawatts.
- (3) The regulations may specify a kind of renewable electricity generation facility by reference to one or more of the following factors—
- (a) the renewable source of energy used at the facility;
 - (b) the technology used to generate electricity at the facility;
 - (c) the electricity generation capacity of the facility;
 - (d) whether the facility is a land-based facility or an offshore facility.

Identification of qualifying facilities

- 3 (1) Right to buy regulations must make provision enabling those renewable electricity generation facilities which are qualifying facilities to be identified.
- (2) The regulations may make provision enabling the following to be identified—
- (a) different renewable electricity generation facilities located at the same site;
 - (b) any facility at that site which is a qualifying facility.
- (3) The regulations may make provision enabling the following to be identified in cases where there is expansion at a site where a renewable electricity generation facility is located—
- (a) any new renewable electricity generation facility created by the expansion;
 - (b) any facility at that site which is a qualifying facility (including any existing facility which becomes a qualifying facility because its total installed capacity is expected to be 5 megawatts or more as a result of the expansion).

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- (4) Right to buy regulations may make provision about cases in which the right to buy is not to be exercisable in relation to a renewable electricity generation facility which would otherwise be a qualifying facility (an “excepted facility”).
- (5) The functions that may be conferred by regulations under sub-paragraph (4) (in accordance with section 39(1)) include—
 - (a) the function of determining whether or not a renewable electricity generation facility is an excepted facility;
 - (b) the function of specifying that a particular renewable electricity generation facility is an excepted facility.
- (6) The regulations may provide for an excepted facility to be identified by reference to one or more of the following factors—
 - (a) community ownership of the facility;
 - (b) community ownership of a stake in the facility;
 - (c) non-participation in a statutory energy scheme (whether or not there could be participation in the scheme in respect of the facility).

The promoter

- 4 (1) Right to buy regulations must make provision enabling the promoter of a qualifying facility to be identified in a case where the promoter is not, or is not expected to become, the facility operator.
- (2) In this paragraph “promoter” means a person developing a qualifying facility.

The community

- 5 (1) Right to buy regulations must make provision enabling the following to be identified—
 - (a) the community in which a land-based facility is located;
 - (b) the community adjacent to which an offshore facility is located.
- (2) A community must be a geographical area which is—
 - (a) wholly in England, wholly in Wales or wholly in Scotland;
 - (b) partly in England and partly in Wales; or
 - (c) partly in England and partly in Scotland.
- (3) A community may be identified by reference to one or more of the following factors—
 - (a) distance measured from the facility or some other point (such as a point on a coastline adjacent to an offshore facility);
 - (b) the number of residents;
 - (c) administrative boundaries of any kind.

The members of the community

- 6 (1) Right to buy regulations must make provision enabling the following to be identified—
 - (a) individuals who may exercise the right to buy;
 - (b) groups who may exercise the right to buy.

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- (2) The individuals who may exercise the right to buy may be identified by reference to one or more of the following factors—
 - (a) how old an individual is;
 - (b) how long an individual has been resident in the community;
 - (c) whether the community is an individual’s only (or main) place of residence.
- (3) Right to buy regulations may specify the kind, or kinds, of individuals who may not exercise the right to buy.
- (4) Those kinds of individuals may be identified by reference to one or more of the following factors—
 - (a) whether an individual is, or has been, bankrupt or subject to any other kind of arrangement relating to indebtedness;
 - (b) whether an individual has been convicted of a criminal offence involving fraud;
 - (c) whether an individual is connected with—
 - (i) the designated promoter or facility operator, or
 - (ii) bodies or individuals connected with the designated promoter or facility operator.
- (5) The groups who may exercise the right to buy may be identified by reference to one or more of the following factors—
 - (a) the legal form of the group;
 - (b) the constitution, structure and management of the group;
 - (c) the criteria for membership of the group (including criteria relating to residence);
 - (d) the members of the group;
 - (e) the aims of the group;
 - (f) the activities of the group (including economic activities);
 - (g) the geographical area or areas in which, or in relation to which, the group operates;
 - (h) the treatment of income and profits of the group;
 - (i) the treatment of assets of the group (including on its dissolution);
 - (j) whether the group is connected with—
 - (i) the designated promoter or facility operator, or
 - (ii) bodies or individuals connected with the designated promoter or facility operator.
- (6) The provision that may be made about membership, or members, of the group under sub-paragraph (5)(c) or (d) includes provision of any kind that may be made under sub-paragraph (2) or (4) about individuals.
- (7) Right to buy regulations may specify the kind, or kinds, of groups who may not exercise the right to buy.
- (8) Regulations under this paragraph may make provision about which persons are connected with which other persons for the purposes of any such regulations.
- (9) The regulations may provide that one person (“A”) is connected with another person (“B”) by virtue of—
 - (a) a direct or indirect connection;

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- (b) connections arising from employment or office-holding, from family relationships, or from financial arrangements;
- (c) A being the parent of B or another person connected with B;
- (d) A being a subsidiary of B or another person connected with B.

Kinds of stake which may be bought through the right to buy

- 7 (1) Right to buy regulations must specify the kinds of stakes in qualifying facilities which may be bought through the right to buy.
- (2) A stake may take any of the following forms—
- (a) one or more shares in a company;
 - (b) any other interest in a body other than a company;
 - (c) an equitable interest;
 - (d) a right to a royalty related to revenues;
 - (e) a loan.
- (3) Right to buy regulations may make provision about the rights, obligations, powers and other terms attaching to a stake.

Particular kind of stake which may be bought in particular facility

- 8 (1) Right to buy regulations must require the designated promoter or facility operator to choose the kind, or kinds, of stake in a qualifying facility that are to be available through the right to buy.
- (2) The regulations must give the designated promoter or facility operator a choice of at least two different kinds of stake in relation to a qualifying facility.
- (3) The regulations must require the designated promoter or facility operator—
- (a) to carry out a consultation before choosing which kind, or kinds, of stake are to be available, and
 - (b) to take the results of that consultation into account in making the choice.

The price of the stakes

- 9 (1) Right to buy regulations must make provision about setting the price of the available stakes in a qualifying facility.
- (2) In making the regulations, the Secretary of State must have regard to the desirability of the prices of available stakes reflecting a measure of fair value.
- (3) In this paragraph “available stakes”, in relation to a qualifying facility, means the stakes in the qualifying facility that are to be offered through the right to buy.

Total value of the offer

- 10 (1) Right to buy regulations must require the offer to consist of stakes whose combined price is—
- (a) equal to, or
 - (b) greater than,
- the minimum amount described in the regulations.

- (2) That minimum amount must be expressed as a percentage of the total capital costs of development of a qualifying facility.
- (3) That percentage must not exceed 5%.
- (4) The regulations may make provision about—
 - (a) the kinds of costs that are capital costs of development of a qualifying facility;
 - (b) calculation of the total capital costs of development of a qualifying facility.
- (5) The provision about calculation of the total capital costs may provide for the total—
 - (a) to be calculated by reference to a period ending after the time of the calculation (including a period ending with commissioning of the facility);
 - (b) to include costs which have not been incurred at the time of the calculation;
 - (c) to include estimated costs.
- (6) In this paragraph—

“combined price”, in relation to the stakes offered through the right to buy, means the total which the amounts to be paid for all of those stakes will add up to (assuming those stakes are all bought);

“offer” means the offer of stakes in a qualifying facility through the right to buy.

Buying a stake

- 11 (1) Right to buy regulations must make provision about the procedure for exercising the right to buy in relation to a qualifying facility (the “purchase procedure”).
- (2) The purchase procedure must identify what stake or stakes—
 - (a) the individuals resident in the community, and
 - (b) the groups connected with the community,may buy through the right to buy.
- (3) The regulations may require the designated promoter or facility operator to conduct the purchase procedure.
- (4) The purchase procedure must identify the period of time during which stakes in a qualifying facility may be applied for (the “application period”).
- (5) The purchase procedure must secure that the application period does not begin until after planning consent has been given for the development of the qualifying facility.
- (6) Here “planning consent” means whichever of the following is, or are, needed for that facility to be developed—
 - (a) development consent under the Planning Act 2008;
 - (b) planning permission under Part 3 of the Town and Country Planning Act 1990;
 - (c) a marine licence under the Marine and Coastal Access Act 2009;
 - (d) consent of the Scottish Ministers under section 36 of the Electricity Act 1989;
 - (e) planning permission under the Town and Country Planning (Scotland) Act 1997;

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- (f) a marine licence under Part 4 of the Marine (Scotland) Act 2010.

Excessive or insufficient take-up

- 12 (1) Right to buy regulations may make provision (including provision relating to the allocation of stakes)—
- (a) about cases where applications made in the application period exceed the available stakes, and
 - (b) about cases where applications made in the application period do not exceed the available stakes.
- (2) Provision about cases where applications made in the application period do not exceed the available stakes may—
- (a) provide for the right to buy to be modified or to cease to apply;
 - (b) identify a subsequent period of time (a “secondary period”) during which the right to buy is to be exercisable.
- (3) If right to buy regulations identify a secondary period, the regulations may make, in relation to the secondary period, any provision of the kinds mentioned in subparagraphs (1) and (2)(a) that may be made in relation to the application period.
- (4) The power under section 55 to make different provision in community electricity right regulations for different purposes includes power to make provision relating to secondary periods that is different from provision relating to application periods.
- (5) The provision that may differ includes provision about—
- (a) the community in which a land-based facility is located or adjacent to which an offshore facility is located;
 - (b) the individuals resident in a community or the groups connected with a community who may exercise the right to buy.
- (6) In this paragraph—
- “application period” has the meaning given in paragraph 11;
 - “applications” means applications for stakes in a qualifying facility;
 - “available stakes” means the stakes in a qualifying facility that are available to be bought through the right to buy.

Subsequent disposal of a stake

- 13 (1) Right to buy regulations may make provision about the disposal of a stake in a qualifying facility after it has been bought through the right to buy (whether the disposal is by a person who bought the stake through the right to buy or by a person who has subsequently acquired it).
- (2) The regulations may impose restrictions or prohibitions on the disposal of a stake.
- (3) The regulations may impose duties to dispose of a stake in a case where the holder ceases to be—
- (a) an individual resident in a community, or
 - (b) a body connected with a community.
- (4) A restriction or prohibition may limit or prevent the disposal of a stake except to an individual or body who—

- (a) would have been able to buy the stake at the time when the right to buy was originally exercisable, or
- (b) would be able to buy the stake at the time of the disposal, were the right to buy exercisable at that time.

PART 2

OPERATORS, OWNERSHIP & RELATED MATTERS

“Operator and ownership regulations”

- 14 In this Schedule “operator and ownership regulations” means regulations under subsection (2) of section 38.

Bodies that may be facility operators

- 15 If operator and ownership regulations specify two or more kinds of bodies which may be a facility operator, the regulations may make provision about which kind of body may own which kind of facility in which circumstances.

Constitutions of facility operators

- 16 (1) Operator and ownership regulations may require the constitution of a facility operator to be in accordance with provision specified in the regulations.
- (2) In the case of a facility operator that is a company, the regulations may require the constitution of the company to be in accordance with provision about—
- (a) the voting rights attached to, or other characteristics of, shares in the company;
 - (b) the issuing of new shares in the company.

Ownership of facility operators

- 17 (1) Operator and ownership regulations may make provision about the ownership of facility operators.
- (2) The regulations may—
- (a) impose limitations on who may own a facility operator;
 - (b) require the owners of a facility operator to consist of, or include, one or more persons of a kind specified in the regulations.

Conduct of owners of facility operators

- 18 (1) Operator and ownership regulations may make provision about the conduct of the owners of facility operators.
- (2) The regulations may impose duties, restrictions or prohibitions in relation to the exercise of rights or powers of owners (including a right or power to exercise a vote attached to a share).

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Revenues

- 19 (1) Operator and ownership regulations may make provision about the treatment of the revenues earned by a qualifying facility.
- (2) The regulations may restrict or prohibit the making of arrangements affecting the destination of the revenues.

PART 3

INFORMATION

“Information regulations”

- 20 In this Schedule “information regulations” means regulations under subsection (3) of section 38.

Particular kinds of information

- 21 Information regulations may make provision about the supply of—
- (a) financial information relating to a renewable electricity generation facility;
 - (b) information relating to electricity generation at a renewable electricity generation facility.

Possible buyers of stakes

- 22 Information regulations may make provision about the supply of information by, or to, individuals and groups who are, or may be, interested in exercising the right to buy (were it available to them).

Prospective buyers of stakes

- 23 Information regulations may make provision about the supply of information by, or to, individuals and groups who are entitled to exercise the right to buy.

Applicants for stakes

- 24 Information regulations may make provision about the supply of information by, or to, individuals and groups who are exercising the right to buy.

Owners of stakes

- 25 Information regulations may make provision about the supply of information by, or to, individuals and groups who hold—
- (a) stakes which they have bought through the right to buy, or
 - (b) stakes which they have acquired after their sale through the right to buy.

PART 4

SUPPLEMENTARY

Interpretation

26 In this Schedule—

“body” means an incorporated or unincorporated body of persons;

“company” includes any other kind of incorporated body;

“designated promoter”, in relation to a renewable electricity generation facility, means the promoter identified in accordance with regulations under paragraph 4;

“shares” includes any other instrument by which a person holds an interest in the equity of an incorporated body;

“total installed capacity”, in relation to a renewable electricity generation facility, means the maximum capacity at which the facility could be operated for a sustained period without causing damage to it.