



# Energy Act 2004

## 2004 CHAPTER 20

### PART 3

#### ENERGY REGULATION

#### CHAPTER 1

##### ELECTRICITY TRADING AND TRANSMISSION

#### **133 “New trading and transmission arrangements”**

- (1) References in this Chapter to the new trading and transmission arrangements are to new arrangements relating to the trading and transmission of electricity in Great Britain designed—
  - (a) to promote the creation of a single competitive wholesale electricity trading market, and
  - (b) to introduce a single set of arrangements for access to and use of any transmission system in Great Britain.
- (2) Expressions used in subsection (1) have the same meaning as in Part 1 of the 1989 Act (electricity supply), as amended by section 135.

#### **134 Power to modify licence conditions**

- (1) If the Secretary of State considers it necessary or expedient to do so for the purpose of implementing the new trading and transmission arrangements (whether wholly or partly), he may modify—
  - (a) the conditions of a particular licence under section 6 of the 1989 Act (licences authorising supply etc.), or
  - (b) the standard conditions of licences of any of the types of licence mentioned in subsection (1) of that section (generation, transmission, distribution or supply licences).

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- (2) The power under subsection (1) includes—
  - (a) power to make modifications relating to the operation of distribution systems, and
  - (b) power to make incidental, consequential or transitional modifications.
- (3) Before making modifications under this section, the Secretary of State shall consult the holder of any licence being modified and such other persons as he considers appropriate.
- (4) Subsection (3) may be satisfied by consultation before, as well as by consultation after, the commencement of this section.
- (5) The Secretary of State shall publish any modifications under subsection (1) in such manner as he considers appropriate.
- (6) Any modification under subsection (1)(a) of part of a standard condition of a licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the 1989 Act.
- (7) Where the Secretary of State modifies the standard conditions of licences of any type under subsection (1)(b), GEMA shall—
  - (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
  - (b) publish the modifications in such manner as it considers appropriate.
- (8) The power under subsection (1) may not be exercised after the end of the period of eighteen months beginning with the day on which that subsection comes into force.
- (9) In subsection (2)(a), the reference to distribution systems is to be construed in accordance with section 4(4) of the 1989 Act.

### **135 Alteration of transmission activities requiring licence**

- (1) Section 4 of the 1989 Act (prohibition on unlicensed activities in connection with supply of electricity) is amended as follows.
- (2) In subsection (1) (which lists the activities prohibited), for paragraph (b) substitute—
 

“(b) participates in the transmission of electricity for that purpose;”.
- (3) After subsection (3) insert—
 

“(3A) In subsection (1)(b) above, the reference to a person who participates in the transmission of electricity is to a person who—

  - (a) co-ordinates, and directs, the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place, or
  - (b) makes available for use for the purposes of such a transmission system anything which forms part of it.

(3B) For the purposes of subsection (3A)(b), a person shall not be regarded as making something available just because he consents to its being made available by another.”

- (4) In subsection (4) (definitions for the purposes of Part 1), for the definition of “transmit” substitute—

““transmission”, in relation to electricity, means transmission by means of a transmission system;

“transmission system” means a system which—

- (a) consists (wholly or mainly) of high voltage lines and electrical plant, and
- (b) is used for conveying electricity from a generating station to a substation, from one generating station to another or from one substation to another.”

### **136 Transmission licences**

- (1) In section 6 of the 1989 Act (licences authorising supply etc.), in subsection (1) (kinds of licence which may be granted), for paragraph (b) substitute—

“(b) a licence authorising a person to participate in the transmission of electricity for that purpose (“a transmission licence”);”.

- (2) After subsection (6) of that section insert—

“(6A) A transmission licence may authorise the holder to participate in the transmission of electricity in any area, or only in an area specified in the licence.

(6B) The Authority may, with the consent of the holder of a transmission licence, modify terms included in the licence in pursuance of subsection (6A) above.”

- (3) In section 7 (licence conditions: general), after subsection (2) insert—

“(2A) Without prejudice to the generality of paragraph (a) of subsection (1), conditions included in a transmission licence by virtue of that paragraph may—

- (a) require the licence holder not to carry on an activity which he would otherwise be authorised by the licence to carry on, or
- (b) restrict where he may carry on an activity which he is authorised by the licence to carry on.”

### **137 New standard conditions for transmission licences**

- (1) If the Secretary of State considers it necessary or expedient to do so for the purpose of implementing the new trading and transmission arrangements, he may determine new standard conditions in relation to transmission licences.

- (2) The Secretary of State shall publish any conditions determined under subsection (1) in such manner as he considers appropriate.

- (3) Conditions published in accordance with subsection (2) shall be standard conditions for the purposes of transmission licences, subject to any modifications of the standard conditions for the purposes of licences of that type made—

- (a) under Part 1 of the 1989 Act, or
- (b) under this Act,

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after the determination under subsection (1).

- (4) The standard conditions for the purposes of transmission licences may contain provision—
- (a) for any standard condition included in a transmission licence not to have effect until brought into operation in such manner, and in such circumstances, as may be specified in, or determined under, the standard conditions;
  - (b) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined;
  - (c) for any standard condition included in such a licence which is suspended to be brought back into operation in such manner, and in such circumstances, as may be so specified or determined.
- (5) In section 8A of the 1989 Act (standard conditions of licences), in subsection (1) (incorporation in future licences of conditions which are standard conditions by virtue of section 33(1) of the Utilities Act 2000 (c. 27)), for the words from “section 6(1)” to “supply licences” substitute “section 6(1)(a), (c) or (d) (that is to say, generation licences, distribution licences or supply licences)”.
- (6) In that section, after subsection (1) insert—
- “(1A) Subject to subsection (2), each condition which by virtue of section 137(3) of the Energy Act 2004 is a standard condition for the purposes of transmission licences shall be incorporated by reference in each transmission licence granted on or after the day on which section 137(6) of that Act comes into force.”
- (7) The power under subsection (1) may not be exercised—
- (a) after the end of the period of eighteen months beginning with the day on which that subsection comes into force, or
  - (b) on or after the day on which subsections (5) and (6) come into force.

### **138 Conversion of existing transmission licences**

Schedule 17 (which makes provision for a licensing scheme in relation to existing transmission licences) has effect.

### **139 Grant of transmission licences**

- (1) If the Secretary of State considers it necessary or expedient to do so for the purpose of implementing the new trading and transmission arrangements, he may by direction—
- (a) require GEMA to grant a transmission licence to such person, and on such terms and subject to such conditions, as the direction may provide;
  - (b) require GEMA to refuse an application for a transmission licence.
- (2) The Secretary of State shall consult GEMA before issuing a direction under subsection (1).
- (3) Subsection (2) may be satisfied by consultation before, as well as by consultation after, the commencement of this section.
- (4) The powers under subsection (1) may not be exercised after the end of the period of eighteen months beginning with the day on which that subsection comes into force.

- (5) The power under subsection (1)(a) may only be exercised on one occasion and then only to require the grant of a single licence.
- (6) The power under subsection (1)(b) may not be exercised once the power under subsection (1)(a) has been exercised.

#### **140 Duties to provide information etc. to Secretary of State**

- (1) If GEMA receives an application for a transmission licence at a time when the power under section 139(1)(b) is exercisable, it shall as soon as practicable send a copy of the application to the Secretary of State.
- (2) GEMA shall provide the Secretary of State with all such information as he may require for the purposes of or in connection with the carrying-out of any of his functions under this Chapter.
- (3) Each holder of a licence under section 6 of the 1989 Act shall provide the Secretary of State with all such information and other assistance as he may require for the purposes of or in connection with the carrying-out of any of his functions under this Chapter.
- (4) Section 105(1) of the Utilities Act 2000 (c. 27) (general restrictions on disclosure of information) does not apply to a disclosure made in pursuance of this section.

#### **141 Property arrangements schemes**

Schedule 18 (which makes provision about property arrangements schemes) has effect.

#### **142 Interpretation of Chapter 1 of Part 3**

In this Chapter—

“transmission licence” means a licence under section 6(1)(b) of the 1989 Act;

and references to the new trading and transmission arrangements are to be construed in accordance with section 133.

#### **143 Amendments consequential on Chapter 1 of Part 3**

- (1) Schedule 19 (which makes amendments consequential on the provisions of this Chapter) has effect.
- (2) Where the effect of—
  - (a) a modification under section 134, or
  - (b) a scheme under Schedule 17,

is to reduce in any respect the area in which the holder of a transmission licence may carry on activities, Schedule 4 to the 1989 Act shall have effect in relation to him as if any reference to the activities which he is authorised by his licence to carry on included a reference to the activities which he was previously so authorised to carry on.

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#### **144 Transition**

The Secretary of State may by order make in connection with the coming into force of any provision of this Chapter such transitional provision or saving as he considers necessary or expedient.