



Energy Act 2013

2013 CHAPTER 32

PART 2

ELECTRICITY MARKET REFORM

CHAPTER 6

ACCESS TO MARKETS ETC

Market participation and liquidity

49 Power to modify licence conditions etc: market participation and liquidity

- (1) The Secretary of State may modify—
 - (a) a condition of a particular licence under section 6(1)(a) or (d) of EA 1989 (generation and supply licences);
 - (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;
 - (c) a document maintained in accordance with the conditions of licences under section 6(1)(a) or (d) of that Act, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may exercise the power in subsection (1) only for the following purposes—
 - (a) facilitating participation in the wholesale electricity market in Great Britain, whether by licence holders or others;
 - (b) promoting liquidity in that market.
- (3) Modifications made by virtue of that power may include—
 - (a) provision imposing obligations in relation to the sale or purchase of electricity, including, in particular, obligations as to—
 - (i) the terms on which electricity is sold or purchased, and

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- (ii) the circumstances or manner in which electricity is sold or purchased;
 - (b) provision imposing restrictions on the sale or purchase of electricity to or from group undertakings;
 - (c) provision imposing obligations in relation to the disclosure or publication of information.
- (4) For the purposes of subsection (3)(b), electricity is sold to or purchased from a group undertaking if the transaction is between undertakings one of which is a group undertaking in relation to the other.

For this purpose, “undertaking” and “group undertaking” have the same meanings as in the Companies Acts (see section 1161 of the Companies Act 2006).

Power purchase agreement scheme

50 Power to modify licence conditions etc to facilitate investment in electricity generation

- (1) The Secretary of State may modify—
- (a) a condition of a particular licence under section 6(1)(d) of EA 1989 (supply licences);
 - (b) the standard conditions incorporated in licences under that provision by virtue of section 8A of that Act;
 - (c) a document maintained in accordance with the conditions of licences under section 6(1)(d) of that Act, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may exercise the power in subsection (1) only for the purpose of facilitating investment in electricity generation by means of a power purchase agreement scheme.
- (3) For the purposes of this section and section 51—
- (a) a power purchase agreement scheme is a scheme established by supply licence conditions and regulations under section 51 for promoting the availability to electricity generators of power purchase agreements, and
 - (b) “power purchase agreement” means an arrangement under which a licensed supplier agrees to purchase electricity generated by an electricity generator at a discount to a prevailing market price.

For this purpose, “supply licence condition” means any condition, document or agreement of a kind mentioned in subsection (1).

- (4) Provision that may be made under subsection (1) in relation to a power purchase agreement scheme includes provision—
- (a) as to the eligibility of an electricity generator to enter into a power purchase agreement under the scheme;
 - (b) as to the terms of any power purchase agreement to be entered into under the scheme, including provision—
 - (i) for determining the price at which electricity is to be purchased under the agreement (including provision for determining a market price and the amount of a discount at any time);
 - (ii) as to the duration of any such agreement;

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- (c) as to the circumstances in which a licensed supplier is or may be required or permitted to enter, or offer to enter, into a power purchase agreement under the scheme;
 - (d) for the provision of information in connection with the scheme.
- (5) Provision within subsection (4)(c) includes provision for determining which licensed supplier or suppliers is or are to be required or permitted to enter, or offer to enter, into a power purchase agreement with an electricity generator in any particular case.
- (6) Such provision may in particular include provision for the licensed supplier or suppliers in question to be determined—
 - (a) by a process involving a determination or determinations by one or more of the following—
 - (i) the Secretary of State;
 - (ii) the Authority;
 - (iii) the electricity generator;
 - (b) by auction or other competitive process;and provision that may be made by virtue of paragraph (b) includes provision as to the circumstances in which a licensed supplier is or may be required or permitted to participate in an auction or other process.
- (7) For the purposes of this section and section 51, “licensed supplier” means the holder of a licence under section 6(1)(d) of EA 1989.

51 Power purchase agreement scheme: regulations

- (1) The Secretary of State may by regulations make provision, in connection with any modifications made under section 50, for or in connection with a power purchase agreement scheme.
- (2) Any such regulations may in particular—
 - (a) make provision for apportioning amongst licensed suppliers, or any of them, all or any part of the value of any or all of the costs or benefits of any licensed supplier in connection with the scheme;
 - (b) confer functions on the Secretary of State or the Authority (which may include provision for directions to be given to the Authority by the Secretary of State);
 - (c) make provision for the delegation of functions conferred on the Secretary of State or the Authority by the regulations or by virtue of section 50;
 - (d) include provision for obligations imposed by the regulations on licensed suppliers to be enforceable by the Authority as if they were relevant requirements on a regulated person for the purposes of section 25 of EA 1989;
 - (e) make provision about the provision of information in connection with the scheme.
- (3) Provision that may be included in regulations under this section by virtue of subsection (2)(a) includes, in particular, provision—
 - (a) for requiring licensed suppliers to pay a levy to the Authority at specified times;
 - (b) specifying how such a levy is to be calculated;
 - (c) conferring an entitlement on a licensed supplier to receive a payment from the Authority.

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- (4) Provision which may be included in regulations by virtue of subsection (3) includes provision for the Secretary of State or the Authority to determine what is to be taken into account as a cost or benefit of any licensed supplier in connection with the scheme and its value.
- (5) Regulations under this section may—
 - (a) include incidental, supplementary and consequential provision;
 - (b) make transitory or transitional provision or savings;
 - (c) make different provision for different cases or circumstances or for different purposes;
 - (d) make provision subject to exceptions.
- (6) Before making any regulations under this section, the Secretary of State must consult—
 - (a) licensed suppliers,
 - (b) the Authority, and
 - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (7) Subsection (6) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (8) Regulations under this section must be made by statutory instrument.
- (9) An instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

52 Power purchase agreement scheme: disclosure of information

In section 105 of the Utilities Act 2000 (general restrictions on disclosure of information)—

- (a) in subsection (1)(a), after “2010” insert “or section 50 or 51 of the Energy Act 2013”;
- (b) in subsection (3)(a), after “2010” insert “, section 50 or 51 of the Energy Act 2013”.

53 Principal objective and general duties: power purchase agreement scheme

Sections 3A to 3D of EA 1989 (principal objective and general duties) apply in relation to functions of the Secretary of State or the Authority conferred by or by virtue of section 50 or 51, or section 54 so far as it relates to a power purchase agreement scheme, as they apply in relation to functions under Part 1 of that Act.

Supplementary

54 Licence modifications under sections 49 and 50: further provisions

- (1) A modification of a licence under section 49(1) or 50(1) may in particular include a modification—
 - (a) to provide for a new document to be required to be prepared and maintained in accordance with the conditions of such a licence;
 - (b) to provide for an agreement to give effect to a document so maintained.

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- (2) Before making modifications under section 49(1) or 50(1), the Secretary of State must consult—
- (a) the holder of any licence being modified,
 - (b) the Authority, and
 - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (3) Subsection (2) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.