

## SCHEDULES

### SCHEDULE 2

#### INVESTMENT CONTRACTS

#### PART 2

##### REGULATIONS: GENERAL

##### *Regulations for the purposes of investment contracts*

- 6 (1) The Secretary of State may by regulations make further provision about or in connection with investment contracts.
- (2) The provision which may be made by regulations includes, but is not limited to, the provision described in this Schedule.
- (3) Regulations 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.
- (4) Regulations are to be made by statutory instrument.
- (5) An instrument containing regulations of any of the following kinds may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament (in each case, whether or not the regulations also make any other provision)—
- (a) the first regulations which make provision falling within paragraph 10,
  - (b) the first regulations which make provision falling within paragraph 11, or
  - (c) regulations which make provision falling within any other paragraph of Parts 1 to 3 of this Schedule.
- (6) Any other instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) If, but for this sub-paragraph, an instrument containing regulations would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

##### *Supplier obligation*

- 7 (1) Regulations may make provision for electricity suppliers to pay the Secretary of State for the purpose of enabling payments to be made under investment contracts.

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- (2) Regulations must make provision for electricity suppliers to pay an investment contract counterparty or a CFD counterparty for the purpose of enabling payments to be made under investment contracts.
- (3) Regulations may make provision for electricity suppliers to pay the Secretary of State, an investment contract counterparty or a CFD counterparty for the purpose of enabling the person to whom the payments are made—
  - (a) to meet such other descriptions of costs as the Secretary of State considers appropriate;
  - (b) to hold sums in reserve;
  - (c) to cover losses in the case of insolvency or default of an electricity supplier.
- (4) In sub-paragraph (3)(a) “costs” means costs in connection with the performance of any function conferred by or by virtue of this Schedule.
- (5) Regulations may make provision to require electricity suppliers to provide financial collateral to the Secretary of State, an investment contract counterparty or a CFD counterparty (whether in cash, securities or any other form).
- (6) Regulations which make provision by virtue of sub-paragraph (1) or (2) for the payment of sums by electricity suppliers must impose on the person to whom such sums are to be paid a duty in relation to the collection of such sums.
- (7) Provision made by virtue of this paragraph may include provision for—
  - (a) the Secretary of State, an investment contract counterparty or a CFD counterparty to determine the form and terms of any financial collateral;
  - (b) the Secretary of State, an investment contract counterparty or a CFD counterparty to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed by an electricity supplier or are to be provided as financial collateral by an electricity supplier;
  - (c) the issuing of notices by the Secretary of State, an investment contract counterparty or a CFD counterparty to require the payment or provision of such amounts;
  - (d) the enforcement of obligations arising under such notices.
- (8) Provision made by virtue of sub-paragraph (7)(b) may provide for anything which is to be calculated or determined under the regulations to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.
- (9) Provision made by virtue of sub-paragraph (7)(d) may include provision—
  - (a) about costs;
  - (b) about interest on late payments under notices;
  - (c) about references to arbitration;
  - (d) about appeals.
- (10) Any sum which—
  - (a) an electricity supplier is required by virtue of regulations to pay to the Secretary of State, an investment contract counterparty or a CFD counterparty, and
  - (b) has not been paid by the date on which it is required by virtue of regulations to be paid,

may be recovered from the electricity supplier by the Secretary of State, the investment contract counterparty or the CFD counterparty (as the case may be) as a civil debt due to that person.

#### *Payments to electricity suppliers*

- 8 (1) Regulations may make provision about the amounts which must be paid by the Secretary of State, an investment contract counterparty or a CFD counterparty to electricity suppliers.
- (2) Provision made by virtue of this paragraph may—
- (a) include provision for the person by whom sums are owed to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed;
  - (b) provide for anything which is to be calculated or determined under the regulations to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.

#### *Application of sums*

- 9 (1) Regulations may make provision for apportioning sums—
- (a) received by the Secretary of State, an investment contract counterparty or a CFD counterparty from electricity suppliers under provision made by virtue of paragraph 7;
  - (b) received by the Secretary of State, an investment contract counterparty or a CFD counterparty under an investment contract,
  - (c) received by a CFD counterparty from electricity suppliers under provision made by virtue of section 9;
  - (d) received by a CFD counterparty under a CFD,
- in circumstances where the Secretary of State, an investment contract counterparty or a CFD counterparty is unable fully to meet liabilities under an investment contract or a CFD.
- (2) Provision made by virtue of sub-paragraph (1) may include provision about the meaning of “unable fully to meet liabilities under an investment contract or a CFD”.
- (3) In making provision by virtue of sub-paragraph (1) the Secretary of State must have regard to the principle that sums should be apportioned in proportion to the amounts which are owed.
- (4) Regulations may make provision about the application of sums held by the Secretary of State, an investment contract counterparty or a CFD counterparty.
- (5) Provision made by virtue of sub-paragraph (4) may include provision that sums are to be paid, or not to be paid, into the Consolidated Fund.

#### *Information and advice*

- 10 (1) Regulations may make provision about the provision and publication of information.
- (2) Provision made by virtue of sub-paragraph (1) may include provision—

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- (a) for the Secretary of State to require the national system operator to provide advice to the Secretary of State;
  - (b) for the Secretary of State to require an investment contract counterparty, a CFD counterparty, the Authority, the Northern Ireland Authority for Utility Regulation or the Northern Ireland system operator to provide advice to the Secretary of State or any other person specified in the regulations;
  - (c) for the Secretary of State to require an investment contract counterparty, a CFD counterparty, the national system operator, electricity suppliers, the Authority, the Northern Ireland Authority for Utility Regulation, the Northern Ireland system operator or a generator who is party to an investment contract to provide information to the Secretary of State or any other person specified in the regulations;
  - (d) for the national system operator to require information to be provided to it by an investment contract counterparty, a CFD counterparty, a generator who is party to an investment contract or the Northern Ireland system operator;
  - (e) for an investment contract counterparty or a CFD counterparty to require information to be provided to it by electricity suppliers or the Northern Ireland system operator;
  - (f) for the classification and protection of confidential or sensitive information;
  - (g) for the enforcement of any requirement imposed by virtue of paragraphs (a) to (f).
- (3) In sub-paragraph (2) “Northern Ireland system operator” means the holder of a licence under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)).
- (4) The prohibition on disclosure of information by—
- (a) section 105(1) of the Utilities Act 2000;
  - (b) Article 63(1) of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6));
- does not apply to a disclosure required by virtue of this paragraph.

*Investment contracts: functions of the Authority*

- 11 Regulations may make provision conferring functions on the Authority for the purpose of offering advice to, or making determinations on behalf of, a party to an investment contract.

*Enforcement*

- 12 (1) Regulations may include provision for requirements under the regulations to be enforceable—
- (a) by the Authority as if they were relevant requirements on a regulated person for the purposes of section 25 of EA 1989;
  - (b) by the Northern Ireland Authority for Utility Regulation as if they were relevant requirements on a regulated person for the purposes of Article 41A of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)).
- (2) Provision made by virtue of sub-paragraph (1)(b) may be made in relation only to the enforcement of requirements imposed on the holder of a licence under Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)).

### Consultation

- 13 (1) Before making regulations the Secretary of State must consult—
- (a) the Scottish Ministers,
  - (b) the Welsh Ministers,
  - (c) the Department of Enterprise, Trade and Investment, and
  - (d) such other persons as the Secretary of State considers it appropriate to consult.
- (2) Before making regulations which contain provision falling within paragraph 7, 8 or 14(3), the Secretary of State must also consult electricity suppliers.
- (3) Before making regulations which contain provision falling within paragraph 9, the Secretary of State must also consult electricity suppliers and any electricity generator who is party to an investment contract.
- (4) Before making regulations which contain provision falling within paragraph 11 or 12(1)(a), the Secretary of State must also consult the Authority.
- (5) Before making regulations which contain provision falling within paragraph 12(1)(a), the Secretary of State must also consult any person who is a holder of a licence under section 6(1)(d) of EA 1989.
- (6) Before making regulations which contain provision falling within paragraph 12(1)(b), the Secretary of State must also consult the Northern Ireland Authority for Utility Regulation and any person who is a holder of a licence under Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)).
- (7) If regulations impose requirements by virtue of paragraph 10(2), the Secretary of State must before making the regulations also consult any person upon whom a requirement is imposed.
- (8) The requirement to consult may be satisfied by consultation before, as well as consultation after, the passing of this Act.