



# Energy Act 2013

## 2013 CHAPTER 32

### PART 2

#### ELECTRICITY MARKET REFORM

### CHAPTER 5

#### CONFLICT OF INTEREST AND CONTINGENCY ARRANGEMENTS

#### **45 Modifications of transmission and other licences: business separation**

- (1) The Secretary of State may modify—
  - (a) a condition of a particular licence under section 6(1)(a) to (e) of EA 1989 (generation, transmission, distribution, supply and interconnector 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) to (e) of that Act, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may make a modification under subsection (1) only for the purpose of imposing measures for or in connection with securing an appropriate degree of business separation between the carrying on of—
  - (a) system operation functions (or any particular such function), and
  - (b) any other functions (including, in a case where a measure relates to a particular system operation function, other system operation functions).
- (3) “System operation functions” are—
  - (a) functions authorised under a transmission licence of co-ordinating and directing the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place, and
  - (b) EMR functions.

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*Changes to legislation: Energy Act 2013, Section 45 is up to date with all changes known to be in force on or before 24 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (4) A degree of business separation is “appropriate” for the purposes of subsection (2) if the Secretary of State determines it to be necessary or desirable as a consequence of the conferral of EMR functions.
- (5) In making that determination, the Secretary of State must have regard to the extent to which a measure of the kind mentioned in subsection (2) may affect the efficient and effective carrying on of system operation functions and other functions authorised under a transmission licence.
- (6) The measures referred to in subsection (2) include, in particular, measures for or in connection with securing any of the following—
- (a) the body corporate that carries on EMR functions does not carry on other functions;
  - (b) limitations are in place in respect of the control or influence that may be exercised over that body by another group undertaking (within the meaning of the Companies Acts - see section 1161 of the Companies Act 2006);
  - (c) separations are in place between—
    - (i) the locations where system operation functions, and other functions, are carried on;
    - (ii) the information technology systems used for the purposes of the carrying on of system operation functions and other functions;
  - (d) the accounting arrangements in relation to system operation functions are separate from those in relation to other functions;
  - (e) persons who participate in the carrying on of system operation functions do not participate in the carrying on of other functions;
  - (f) persons with access to information obtained in the carrying on of system operation functions do not have access to information obtained in the carrying on of other functions.
- (7) The power conferred by subsection (1) may be exercised so as to impose a requirement on a person holding a transmission licence—
- (a) to prepare annual reports about how measures within subsection (2) have been put in place for the year in question, and
  - (b) to submit such reports to either or both of the Secretary of State and the Authority.
- (8) Before making a modification under subsection (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.
- (9) Subsection (8) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (10) In this section—
- “EMR functions” means functions conferred by or by virtue of Chapter 2 (contracts for difference), Chapter 3 (capacity market) or Chapter 4 (investment contracts);
- “transmission”, “transmission licence” and “transmission system” have the same meaning as in Part 1 of EA 1989.

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 68(4) inserted by [2023 c. 52 s. 302\(4\)](#)