

## SCHEDULE

## ENERGY TRANSFER SCHEMES

*Provision that may be made by a scheme*

- 4.—(1) An energy transfer scheme may contain provision—
- (a) for the creation, in favour of the old energy company or the new energy company, of an interest or right in or in relation to property transferred in accordance with the scheme;
  - (b) for giving effect to a transfer to the new energy company by the creation, in favour of that company, of an interest or right in or in relation to property retained by the old energy company;
  - (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between the old energy company and the new energy company;
  - (d) in connection with any provision made under this sub-paragraph, provision making incidental provision as to the interests, rights and liabilities of other persons with respect to the property, rights and liabilities to which the scheme relates.
- (2) The property, rights and liabilities of the old energy company that may be transferred in accordance with an energy transfer scheme include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the old energy company;
  - (b) property acquired, and rights and liabilities arising, in the period after the making of the scheme but before it takes effect;
  - (c) rights and liabilities arising after it takes effect in respect of matters occurring before it takes effect;
  - (d) property situated anywhere in Northern Ireland or elsewhere;
  - (e) rights and liabilities under the law of Northern Ireland or of a place outside Northern Ireland;
  - (f) rights and liabilities under any statutory provision or EU instrument.
- (3) The transfers to which effect may be given by an energy transfer scheme include transfers of interests and rights that are to take effect in accordance with the scheme as if there were—
- (a) no such requirement to obtain a person's consent or concurrence,
  - (b) no such liability in respect of a contravention of any other requirement, and
  - (c) no such interference with any interest or right,

as there would be, in the case of a transaction apart from this Act, by reason of a provision falling within sub-paragraph (4).

(4) A provision falls within this sub-paragraph to the extent that it has effect (whether under a statutory provision or agreement or otherwise) in relation to the terms on which the old energy company is entitled, or subject, to anything to which the transfer relates.

(5) Sub-paragraph (6) applies where (apart from that sub-paragraph) a person would be entitled, in consequence of anything done or likely to be done by or under this Act in connection with an energy transfer scheme—

- (a) to terminate, modify, acquire or claim an interest or right; or
- (b) to treat an interest or right as modified or terminated.

(6) That entitlement—

- (a) shall not be enforceable in relation to that interest or right until after the transfer of the interest or right by the scheme; and
- (b) shall then be enforceable in relation to the interest or right only in so far as the scheme contains provision for the interest or right to be transferred subject to whatever confers that entitlement.

(7) Sub-paragraphs (3) to (6) have effect where shares in a subsidiary of the old energy company are transferred—

- (a) as if the reference in sub-paragraph (4) to the terms on which the old energy company is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect; and
- (b) in relation to an interest or right of the subsidiary, as if the references in sub-paragraph (6) to the transfer of the interest or right included a reference to the transfer of the shares.

(8) Sub-paragraphs (3) and (4) apply to the creation of an interest or right by an energy transfer scheme as they apply to the transfer of an interest or right.