

SCHEDULE 4

Protection of UK-wide Interests

PART 4

Electricity infrastructure payments

Interpretation

25.—(1) In this Part—

“agreement” means an agreement between the manager and a relevant person which grants rights to that person—

- (a) in, under or over any part of the Scottish foreshore, Scottish coastal waters or the Scottish zone, and
- (b) in connection with the transmission or distribution of electricity, or participation in the operation of an electricity interconnector;

“appropriate person” means—

- (a) such person as the Treasury and the Scottish Ministers may agree, or
- (b) if no person is agreed, such person as may be nominated, on the joint application of the Treasury and the Scottish Ministers, by the Royal Institution of Chartered Surveyors;

“market value”, in relation to an agreement, means the best consideration in money or money’s worth which can reasonably be obtained, having regard to all the circumstances of the case but ignoring for that purpose any element of monopoly value which may exist;

“payment” means—

- (a) a payment which is first required on or after the transfer date, or
- (b) an increase in a payment which takes effect on or after the transfer date regardless of when the payment was first required;

“relevant person” means a person who—

- (a) is required to have a licence by virtue of paragraph (b), (bb), or (d) of section 4(1) of the Electricity Act 1989⁽¹⁾, or
- (b) would be so required but for an exemption under section 5 of that Act; and

“territorial sea” means the UK territorial sea but does not include any part of Scotland.

(2) Terms used in this Part which are also used in Part 1 of the Electricity Act 1989 have the same meaning as in that Act.

Notification of proposed payment

26. Where the manager proposes to require a payment from a relevant person in connection with an agreement, the manager must notify the Treasury in writing of the payment and of how the payment is to be calculated.

(1) 1989 c.29; paragraph (bb) of section 4(1) was inserted by section 28(2) of the Utilities Act 2000 (c.27) and paragraphs (b) and (d) of that section were inserted respectively by sections 135(2) and 145(2) of the Energy act 2004 (c.20).

No notice of objection to proposed payment

27. Unless the Treasury give notice in accordance with paragraph 28, the manager may require the payment after the expiration of—

- (a) the period of three months beginning on the day on which the notification is given under paragraph 26, or
- (b) such shorter period as the Treasury may allow.

Determination of market value

28. If the Treasury consider that the payment may be more than market value, the Treasury may give notice in writing to the manager before the expiration of the period mentioned in paragraph 27.

29. Where the Treasury have given notice in accordance with paragraph 28, the appropriate person must determine an amount which is market value for the payment.

30. Before making the determination under paragraph 29 the appropriate person must consult the Gas and Electricity Markets Authority.

31.—(1) In making the determination under paragraph 29, the appropriate person must have regard to—

- (a) the amount of any payment required by the manager for the grant of equivalent rights in, under or over any part of the Scottish foreshore, Scottish coastal waters or the Scottish zone;
- (b) the amount of any payment required by the Commissioners for the grant of equivalent rights in, under or over any part of the foreshore, the territorial sea or the exclusive economic zone;
- (c) any representations made by the Gas and Electricity Markets Authority following consultation under paragraph 30; and
- (d) any duly-made representation provided to the appropriate person by any of the following—
 - (i) the manager,
 - (ii) the relevant person,
 - (iii) the Treasury.

(2) In this paragraph—

“duly-made representation” means a representation which complies with all relevant requirements notified in writing by the appropriate person to the maker of the representation; and

“relevant requirement” means a requirement as to—

- (a) the content or length of a representation, or
 - (b) the date by which a representation must be submitted to the appropriate person,
- provided that any requirement under paragraph (b) must not take effect any earlier than 28 days after the day on which the requirement is notified to the maker of the representation.

32. As soon as reasonably practicable after making the determination under paragraph 29, the appropriate person must notify the following persons of the determination—

- (a) the manager,
- (b) the relevant person,
- (c) the Treasury, and
- (d) the Gas and Electricity Markets Authority.

33. The manager must ensure that the payment does not exceed the amount determined under paragraph 29.

Fees of the appropriate person

34. The appropriate person may charge a fee in respect of its determination under paragraph 29 and may apportion that fee as it considers appropriate between the manager and the Treasury.

Disapplication of paragraph 26

35.—(1) Where either paragraph 36 or 37 applies, the manager is not required to notify the Treasury under paragraph 26.

36. This paragraph applies where the manager—

- (a) has agreed a schedule of payments with the Treasury, and
- (b) proposes to require a payment from a relevant person in connection with an agreement which is in accordance with that schedule.

37.—(1) This paragraph applies where—

- (a) an appropriate person has determined under paragraph 29 an amount which is market value for a payment in connection with an agreement; and
- (b) the manager proposes—
 - (i) to make an agreement with a relevant person on the same terms and conditions as the existing agreement, and
 - (ii) to require a payment from the relevant person in connection with the agreement which does not exceed the existing amount.

(2) In sub-paragraph (1)(b)—

- “the existing agreement” means the agreement mentioned in sub-paragraph (1)(a), and
- “the existing amount” means the amount mentioned in sub-paragraph (1)(a).

Requirement for a valid payment

38. Any payment which is required by the manager from a relevant person in connection with an agreement is void unless it is levied in accordance with paragraph 27, 33, 36 or 37(1) of this Part.