



Electricity Act 1989

1989 CHAPTER 29

PART I

ELECTRICITY SUPPLY

[^{F1}Electricity transmission and the operation of electricity interconnectors: independence

[^{F1}10F The ownership unbundling requirement

- (1) In section 10E(3) the ownership unbundling requirement is met by an applicant for certification if [^{F2}in relation to each of the five tests below—
 - (a) the Authority thinks that it is passed, or
 - (b) it is treated as passed by virtue of subsection (7), (9) or (9A).]
- (2) The first test is that the applicant—
 - (a) does not control a relevant producer or supplier;
 - (b) does not have a majority shareholding in a relevant producer or supplier; and
 - (c) will not, on or after the relevant date, exercise shareholder rights in relation to a relevant producer or supplier.
- (3) For the purposes of subsection (2)(c), the Authority is entitled to think that the applicant will not exercise shareholder rights if the applicant has given an undertaking not to exercise those shareholder rights.
- (4) The second test is that, where the applicant is a company, partnership or other business, none of its senior officers has been, or may be, appointed by a person who—
 - (a) controls an electricity undertaking which is a relevant producer or supplier; or
 - (b) has a majority shareholding in an electricity undertaking which is a relevant producer or supplier.
- (5) The third test is that, where the applicant is a company, partnership or other business, none of its senior officers is also a senior officer of an electricity undertaking which is a relevant producer or supplier.

Changes to legislation: Electricity Act 1989, Section 10F is up to date with all changes known to be in force on or before 29 May 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

- (6) The fourth test is that the applicant is not controlled by a person who controls a relevant producer or supplier.
- (7) But even where the fourth test is not passed, the Authority may treat it as passed if—
- (a) the control over the applicant was gained through the exercise of a right conferred as a condition of the provision of either financial support or a guarantee (or both), in relation to the applicant’s business; or
 - (b) the control over the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.
- (8) The fifth test is that the applicant is not controlled by a person who has a majority shareholding in a relevant producer or supplier.
- (9) But even where the fifth test is not passed, the Authority may treat it as passed if—
- (a) the control over the applicant was gained through the exercise of a right conferred as a condition of the provision of either financial support or a guarantee (or both), in relation to the applicant’s business; or
 - (b) the majority shareholding in the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.
- [Except where subsection (9B) applies, the Authority may treat one or more of the five ^{F3}(9A) tests in this section as passed if—
- (a) the test or tests are not passed in relation to a relevant producer or supplier,
 - (b) the applicant has demonstrated to the Authority’s satisfaction that the applicant does not have a relationship with the relevant producer or supplier which might lead the applicant to discriminate in favour of the relevant producer or supplier, and
 - (c) the Authority thinks it appropriate to treat the test or tests as passed.
- (9B) This subsection applies where the applicant, or a person who controls or has a majority shareholding in the applicant, controls or has a majority shareholding in a person (“A”) who operates a generating station and—
- (a) A is a relevant producer or supplier; and
 - (b) the generating station is directly physically connected to anything that forms part of the applicant’s transmission system or electricity interconnector.]

(10) In subsection (2)(c) “relevant date” means the relevant date for the purposes of section 10A(1) or (3).]

Textual Amendments

- F1** Ss. 10A-10O and cross-heading inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), 5
- F2** Words in s. 10F(1) substituted (15.1.2015) by [The Electricity and Gas \(Ownership Unbundling\) Regulations 2014 \(S.I. 2014/3333\)](#), regs. 1(1), **3(2)** (with reg. 4)
- F3** S. 10F(9A)(9B) inserted (15.1.2015) by [The Electricity and Gas \(Ownership Unbundling\) Regulations 2014 \(S.I. 2014/3333\)](#), regs. 1(1), **3(3)** (with reg. 4)

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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. 4(1)(f) and word inserted by [2023 c. 52 s. 186\(3\)\(b\)](#)
- s. 4(1)(ca) inserted by [2023 c. 52 s. 166\(2\)](#)
- s. 4(1)(da) inserted by [2023 c. 52 s. 205\(2\)\(b\)](#)
- s. 4(3H)(3I) inserted by [2023 c. 52 s. 186\(4\)](#)
- s. 4(3CA) inserted by [2023 c. 52 s. 205\(3\)](#)
- s. 4(3EA) inserted by [2023 c. 52 s. 205\(5\)](#)
- s. 6(1)(g) and word inserted by [2023 c. 52 s. 186\(7\)\(b\)](#)
- s. 6(1)(ea) inserted by [2023 c. 52 s. 205\(8\)\(b\)](#)
- s. 6(2C) inserted by [2023 c. 52 s. 186\(8\)](#)
- s. 6(2AA) inserted by [2023 c. 52 s. 205\(9\)](#)
- s. 6(6E) inserted by [2023 c. 52 s. 205\(10\)](#)
- s. 7(3GA) inserted by [2023 c. 52 s. 186\(17\)](#)
- s. 7A(11B) inserted by [2023 c. 52 s. 186\(18\)](#)
- s. 8A(1C) inserted by [2023 c. 52 s. 206\(6\)](#)
- s. 10NA inserted by [2023 c. 52 s. 207\(2\)](#)
- s. 11E(2)(d) and word inserted by [2013 c. 32 s. 138\(5\)\(b\)\(iii\)](#)
- s. 15(2)(aa) inserted by S.I. 2019/93, Sch. 1 para. 3(2)(b) (as substituted) by [S.I. 2019/1245 reg. 19](#) (This amendment not applied to [legislation.gov.uk](#). The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 25(8A) inserted by [2023 c. 52 Sch. 14 para. 7\(3\)](#)
- s. 44A inserted by [1992 c. 43 s. 23](#)
- s. 44A(6)(b)(i) words substituted by [2013 c. 22 Sch. 9 para. 52](#)
- s. 44B(1)(a)(iiia) inserted by [2023 c. 52 Sch. 17 para. 8](#)
- s. 56C(6)(d) and word inserted by [2013 c. 32 s. 138\(5\)\(d\)\(ii\)](#)
- Sch. 6A para. 9ZA and cross-heading inserted by [2023 c. 52 Sch. 14 para. 8](#)