

## **ENERGY ACT 2013**

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### **EXPLANATORY NOTES**

#### **COMMENTARY ON SECTIONS**

#### **Part 2: Electricity Market Reform**

#### **Chapter 5: Conflict of interest and contingency arrangements**

#### **Section 46: Power to transfer EMR functions**

242. This section confers a power on the Secretary of State to transfer the delivery functions for the CFD and capacity market schemes and those relating to investment contracts (“EMR functions”) to a new delivery body in certain situations.
243. *Subsection (1)* confers the power to transfer the EMR functions from the national system operator to a different delivery body. The power is exercisable by negative resolution order (see *subsections (6) and (7)* of section 47).
244. *Subsection (2)* provides that the EMR delivery functions can be transferred in five circumstances.
- where the national system operator requests a transfer;
  - where the national system operator is subject to an energy administration order granted under the Energy Act 2004; energy administration orders may be made by the court under a special regime to ensure that energy network companies provide secure energy supplies in insolvency situations;
  - where there has been a change of control of the national system operator and the Secretary of State considers it necessary or desirable to transfer the functions as a result of that change;
  - where the Secretary of State considers that the EMR delivery functions are not being performed efficiently and effectively;
  - if the Secretary of State considers it necessary or expedient in order to further the purposes for which CFD or capacity market regulations are made; for example, if he or she considers that it is necessary to change delivery body in order to encourage low carbon electricity generation, or in order to meet the demands of consumers for the supply of electricity in Great Britain.
245. *Subsection (3)* defines the circumstances in which the national system operator poor performance trigger could be used. The Secretary of State is required to notify the national system operator of his or her opinion that it is failing to perform its functions in an efficient and effective manner. If, after six months, the Secretary of State considers that the failure has not been rectified, the functions may be transferred.
246. *Subsection (4)* explains the definition of control to be used in relation to the change of control trigger in *subsection (2)*.

*These notes refer to the Energy Act 2013 (c.32)  
which received Royal Assent on 18 December 2013*

247. *Subsection (5)* requires that the national system operator be consulted if the Secretary of State transfers the functions because he or she considers it necessary or expedient in order to further the purposes for which CFD or capacity market regulations are made. *Subsection (6)* allows the Secretary of State to avoid consulting where the urgency of the case would make it inexpedient to do so.
248. *Subsection (7)* allows the Secretary of State to make further transfers of the EMR delivery functions, including a transfer of the EMR delivery functions back to the national system operator.
249. *Subsections (9) and (10)* require the consent of the alternative delivery body when this is someone other than the Secretary of State. This includes any re-conferral of the functions on the national system operator.