

SCHEDULES

SCHEDULE 15

COMPETITIVE TENDERS FOR ELECTRICITY PROJECTS

PART 1

AMENDMENTS OF ELECTRICITY ACT 1989

3 For sections 6C and 6D substitute—

“6C Competitive tenders

- (1) The Authority may by regulations (“tender regulations”) make such provision as appears to it to be appropriate for facilitating the making by a delivery body of—
 - (a) a decision whether to hold a tender exercise in relation to a relevant electricity project;
 - (b) in prescribed circumstances, a determination on a competitive basis of any of the matters listed in subsection (2).
- (2) Those matters are—
 - (a) the person by whom a relevant electricity project is to be carried out;
 - (b) the person to whom a relevant licence is to be granted (whether for the purposes of a relevant electricity project or otherwise);
 - (c) the person to whom a relevant contract is to be awarded.
- (3) The provision mentioned in subsection (1) includes—
 - (a) provision for the Authority to determine, in prescribed cases, whether a tender exercise should be held, or continued, in relation to a relevant electricity project;
 - (b) provision for the publication, in prescribed cases, of a proposal for a relevant licence to be granted or for a relevant contract to be awarded;
 - (c) provision for the inclusion in such a proposal of an invitation to apply for such a licence or to bid for such a contract;
 - (d) provision restricting applications and bids and imposing requirements as to the period within which they must be made;
 - (e) provision for regulating the manner in which applications and bids are considered and determined.
- (4) The provision mentioned in subsection (1) also includes—
 - (a) provision conferring functions on a delivery body;

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- (b) provision authorising the Authority to conduct a review of the exercise by a delivery body of functions conferred on it by the regulations;
 - (c) provision authorising the Authority to appoint another person to conduct such a review on the Authority’s behalf.
- (5) The provision that may be made by virtue of subsection (4)(a) includes provision requiring a delivery body, in prescribed circumstances, to provide information about prescribed matters to the Authority.
- (6) Tender regulations—
- (a) may make provision by reference to a determination by the Authority or by a delivery body, or to the opinion of the Authority or of a delivery body, as to any matter;
 - (b) may dispense with or supplement provision made in relation to applications for relevant licences by or under section 6A or 6B.
- (7) The approval of the Secretary of State is required for the making of tender regulations.
- (8) The making of a determination by virtue of subsection (2)(b) or (c) that a person is to be granted a relevant licence or awarded a relevant contract does not of itself require—
- (a) the Authority to exercise its power to grant a relevant licence to the person, or
 - (b) a contract counterparty to award a relevant contract to the person, (as the case may be).

6CA Power to require information

- (1) Tender regulations may include provision authorising a person to whom subsection (2) applies (“P”), by notice given to another person (an “information notice”), to require the other person to provide relevant information to P.
- (2) This subsection applies to—
- (a) the Authority;
 - (b) a delivery body;
 - (c) a contract counterparty.
- (3) “Relevant information” means information that P reasonably requires for the purposes of or in connection with the exercise of P’s functions.
- (4) References in this section to the Authority include a person appointed by the Authority by virtue of section 6C(4)(c), where the information sought relates to a function conferred by virtue of section 6C(4)(b) (review of activities of delivery body).
- (5) Provision made by virtue of subsection (1) must require an information notice—
- (a) to specify or describe the information sought, and
 - (b) to specify the time by which the information must be provided.
- (6) Provision made by virtue of subsection (1) may include provision—

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- (a) for an information notice and information obtained in pursuance of it to be shared with the Authority, where the notice is given by a person other than the Authority;
 - (b) for the classification and protection of confidential or sensitive information;
 - (c) for the enforcement by the Authority of a requirement to provide information in pursuance of an information notice;
 - (d) for the amount of any financial penalty imposed on a person by virtue of paragraph (c) to be determined by the Authority in accordance with tender regulations.
- (7) Where by virtue of subsection (6)(c) tender regulations provide for the imposition of a financial penalty, they must also include provision for a right of appeal against the imposition of the penalty.

6CB Recovery of tender costs

- (1) Tender regulations may include provision requiring—
- (a) the payment to the Authority or a delivery body, in prescribed circumstances, of amounts in respect of—
 - (i) tender costs of the Authority, or of the delivery body, in relation to a tender exercise;
 - (ii) such amounts in respect of the Authority's tender costs as the Authority considers appropriate, where those costs are not attributable to a particular tender exercise;
 - (iii) such amounts in respect of the delivery body's tender costs as the Authority considers appropriate, where those costs are not attributable to a particular tender exercise.
 - (b) the provision to the Authority or to a delivery body, in prescribed circumstances, of a deposit of a prescribed amount in respect of a liability which a person has, or may in future have, by virtue of paragraph (a) in relation to a relevant licence or relevant contract;
 - (c) the provision to the Authority or to a delivery body, in prescribed circumstances, of security in a form approved by it in respect of such a liability.
- (2) The provision that may be made by virtue of subsection (1)(a) includes provision requiring the payment of cost assessment costs incurred by—
- (a) the Authority, or
 - (b) the delivery body,
- after the Authority or delivery body (as the case may be) has taken the steps required by virtue of subsections (7) to (9) in relation to the tender exercise.
- (3) The regulations may require the payments to be made, or the deposit or security to be provided, by one or more of the following—
- (a) any person who has made a connection request for the purposes of which the tender exercise has been, is being, or is to be, held;
 - (b) any person who made a connection request for the purposes of which any previous tender exercise relating to the same transmission system, or a transmission system consisting of some or all of the

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- same lines or plant or connecting any of the same generating stations or substations, was held;
- (c) any person who made a connection request for the purposes of which any previous tender exercise relating to the same distribution system, or a distribution system consisting of some or all of the same lines or plant or connecting any of same premises or other distribution systems, was held;
 - (d) any person who operates a generating station which is connected to the transmission or distribution system to which the tender exercise relates;
 - (e) any person who submits an application for the relevant licence or bids for the award of a relevant contract to which the tender exercise relates;
 - (f) any person who is the holder of a transmission licence, a distribution licence, an interconnector licence or an MPI licence.
- (4) The regulations may make provision about how—
- (a) payments are to be made, and
 - (b) deposits or other forms of security are to be provided,
- including provision for them to be made or provided by a person approved by the Authority or by a delivery body.
- (5) The regulations may include provision about—
- (a) the times at which payments are to be made, or deposits or other forms of security are to be provided, under the regulations;
 - (b) the circumstances in which a payment made in accordance with regulations made by virtue of subsection (1)(a) is to be repaid (wholly or in part);
 - (c) the circumstances in which such a repayment is to include an amount representing interest accrued on the whole or part of the payment;
 - (d) the circumstances in which a deposit (including any interest accrued on it) or other security provided in accordance with the regulations is to be released or forfeited (wholly or in part);
 - (e) the effect on a person's participation in the tender exercise of a failure to comply with a requirement imposed by virtue of this section, and the circumstances in which the tender exercise is to stop as a result of such a failure.
- (6) The regulations may include provision for—
- (a) the review by the Authority, or by a person appointed by the Authority, of any tender costs determined by a delivery body;
 - (b) the amendment by a delivery body of its tender costs following such a review.
- (7) The regulations must ensure that, as soon as reasonably practicable after a tender exercise or series of tender exercises is finished—
- (a) where the Authority is the delivery body, steps are taken by the Authority, in accordance with the regulations, to ensure that the aggregate of the amounts in subsection (9) does not exceed the Authority's tender costs in respect of the exercise or series of exercises;

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- (b) in any other case, steps are taken by the delivery body, in accordance with the regulations, to ensure that the aggregate of the amounts in subsection (9) does not exceed the aggregate of—
 - (i) the Authority’s tender costs, and
 - (ii) the delivery body’s tender costs,in respect of the exercise or series of exercises.
- (8) The regulations must also ensure that, in a case within subsection (7)(b), the aggregate of the amounts within subsection (9) so far as relating to any particular tender exercise does not include any amount that falls within paragraph (a) of the definition of tender costs in section 6CD(4) in relation to a different tender exercise.
- (9) The amounts are—
 - (a) any fees under section 6A(2) in respect of applications for relevant licences,
 - (b) any payments made or deposits provided in accordance with regulations made by virtue of subsection (1)(a) or (b) and not repaid, and
 - (c) the value of any security provided in accordance with regulations made by virtue of subsection (1)(c) and forfeited in accordance with regulations made by virtue of subsection (5)(d),so far as relating to the tender exercise or series of tender exercises in question.

6CC Competitive tenders: supplementary

- (1) For the purposes of section 6CB(3), a person makes a connection request when the person makes an application to—
 - (a) the holder of a co-ordination licence (in accordance with any provision made by the licence) for an offer of connection to and use of a transmission system, or
 - (b) an electricity distributor (whether in accordance with any provision made by the distributor’s licence or otherwise) for an offer of connection to and use of the distributor’s distribution system.
- (2) A person (“P”) is to be treated for those purposes as having made a connection request if—
 - (a) P would have made the connection request, but for the fact that another person had already made an application within subsection (1)(a) or (b), and
 - (b) the benefit of that application, or any agreement resulting from it, is vested in P.
- (3) Where tender regulations—
 - (a) restrict the making of applications for relevant licences or bids for relevant contracts in relation to a relevant electricity project, or
 - (b) operate so as to prevent an application or bid from being considered or further considered, if the applicant does not meet one or more prescribed requirements,

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the regulations may make provision enabling a person to apply to a relevant body for a decision as to the effect of any such restriction or requirement if the person were to make such an application or bid.

- (4) Regulations made by virtue of subsection (3) may enable a relevant body to charge a person who makes such an application or bid a prescribed fee for any decision given in response to it.
- (5) Where the successful bidder, in relation to a tender exercise, already holds a relevant licence (“the existing licence”)—
- (a) the Authority may make such modifications of the existing licence as are necessary for the purpose of giving effect to the determination resulting from the tender exercise, and
 - (b) references in this Part to the grant of a relevant licence are to be read accordingly.
- (6) Before making any modifications under subsection (5)(a), the Authority must give notice—
- (a) stating that it proposes to make the modifications and setting out their effect, and
 - (b) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,
- and must consider any representations or objections that are duly made and not withdrawn.
- (7) Any sums received by the Authority under tender regulations are to be paid into the Consolidated Fund.
- (8) In section 6CB and this section—
- “co-ordination licence” means a transmission licence which authorises a person to co-ordinate and direct the flow of electricity onto and over a transmission system—
- (a) by means of which the transmission of electricity takes place, and
 - (b) the whole or a part of which is at a relevant place (within the meaning of section 4(5));
- “functions” includes powers and duties;
- “relevant body” means the Authority, a delivery body or a contract counterparty.

6CD Sections 6C to 6CC: further definitions

- (1) This section defines expressions that are used in sections 6C to 6CC (as well as in this section).
- (2) “Prescribed” means prescribed in or determined under tender regulations.
- (3) “Tender exercise” means the steps taken in accordance with tender regulations with a view to determining one or more of the following—
 - (a) the person by whom a relevant electricity project is to be carried out;
 - (b) the person to whom a relevant licence is to be granted;
 - (c) the person to whom a relevant contract is to be awarded.

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- (4) “Tender costs” means—
- (a) costs (including any cost assessment costs) incurred or likely to be incurred by the Authority for the purposes of a particular tender exercise or prospective tender exercise;
 - (b) costs (including any cost assessment costs) incurred or likely to be incurred by a delivery body for the purposes of a particular tender exercise or prospective tender exercise;
 - (c) such proportion as the Authority considers appropriate of the costs that—
 - (i) have been, or are likely to be, incurred by the Authority or by a delivery body under regulations under section 6C, and
 - (ii) are not directly attributable to a particular tender exercise.
- (5) “Cost assessment costs”, in relation to a tender exercise, means costs incurred or likely to be incurred by the Authority or by a delivery body in connection with any assessment of—
- (a) costs that have been or are to be incurred in connection with any property, rights or liabilities necessary or expedient for the performance by a person of functions under a relevant licence granted or a relevant contract awarded to the person as a result of the tender exercise;
 - (b) costs incurred in connection with any property, rights or liabilities that would have been necessary or expedient for the performance of functions under a relevant licence or a relevant contract if such a licence or contract had been granted or awarded to a person as a result of the tender exercise.
- (6) “Successful bidder”, in relation to a tender exercise, is the person in respect of whom (as a result of the exercise) any of the following applies—
- (a) a delivery body determines that a relevant electricity project is to be carried out by the person;
 - (b) a relevant licence has been or is to be granted to the person;
 - (c) a relevant contract has been or is to be awarded to the person.
- (7) Section 6C(8) applies for the purposes of subsections (3)(b) and (c) and (6)(b) and (c) as it applies for the purposes of section 6C(2)(b) and (c).”