

## SCHEDULE 4

Paragraph 7

### Protection of UK-wide Interests

## PART 1

### Protections for defence and national security

#### Interpretation: general

**1.—(1)** In this Part—

“right” means—

(a) in relation to a person other than the manager—

- (i) any right or interest of that person conveyed or granted by the manager in, under or over any part of the Scottish assets, or
- (ii) any right or interest derived from such a right or interest; and

(b) in relation to the manager—

- (i) the use by or on behalf of the manager of any part of the Scottish assets, or
- (ii) the exercise by or on behalf of the manager of any right or interest in, under or over any part of the Scottish assets; and

“Secretary of State” means the Secretary of State for Defence.

(2) In this Part, with the exception of the definition of “right” in sub-paragraph (1), any reference to the grant of a right includes a reference to the conveyance of a right.

#### Interpretation: meaning of market value

**2.—(1)** References to “market value” in this Part are to be construed in accordance with this paragraph.

(2) In paragraphs 3(3)(d) and 4(4), market value, in relation to a right, means the best consideration in money or money’s worth which can reasonably be obtained for the right, having regard to all the circumstances of the case but ignoring for that purpose—

- (a) any element of monopoly value which may exist, and
- (b) any reduction or increase in the consideration due solely to the Secretary of State’s involvement.

(3) In sub-paragraphs (1)(a) and (4) of paragraph 5, market value, in relation to a right, means such compensation as is calculated in accordance with Part 3 of the Land Compensation (Scotland) Act 1963<sup>(1)</sup>.

(4) In paragraph 9(1), market value has the same meaning as in sub-paragraph (2) or (3) (as the case may be).

(5) In this paragraph, the reference to Part 3 of the Land Compensation (Scotland) Act 1963 is a reference to that Part as at the transfer date.

#### Renewal of existing rights of the Secretary of State

**3.—(1)** This paragraph applies to a right of the Secretary of State—

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(1) 1963 c.51.

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- (a) which—
    - (i) exists immediately before the transfer date, or
    - (ii) comes into existence on or after the transfer date (including by operation of any provision in this Schedule); and
  - (b) to which any of the following apply—
    - (i) the right has been granted for a specific term,
    - (ii) the right will terminate on the occurrence of a specific event,
    - (iii) the right may be terminated by the manager.
- (2) At any time before, or as soon as practicable after, the relevant event and following consultation with the manager the Secretary of State may give notice to the manager in writing stating—
- (a) that the Secretary of State requires the right to be renewed,
  - (b) the date on which the right is to begin, and
  - (c) the term for which the right is required to be granted.
- (3) Where notice is given under sub-paragraph (2), a right is deemed to be granted by the manager to the Secretary of State on the same terms and conditions as the existing right but subject to the following modifications—
- (a) the right begins on the date specified in the notice,
  - (b) the right is granted for the term specified in the notice,
  - (c) notwithstanding any provision to the contrary in relation to the existing right, the right will not terminate otherwise than on expiry of the term mentioned in paragraph (b), and
  - (d) the Secretary of State must pay market value for the right.
- (4) Sub-paragraph (3) is subject to any alternative agreement which the manager and the Secretary of State may reach.
- (5) In this paragraph—
- “the existing right” means the right mentioned in sub-paragraph (2)(a); and
  - “relevant event” means—
    - (a) in relation to a right mentioned in sub-paragraph (1)(b)(i), the expiry of the term for which the right was granted,
    - (b) in relation to a right mentioned in sub-paragraph (1)(b)(ii), the occurrence of the event which will terminate the right, and
    - (c) in relation to a right mentioned in sub-paragraph (1)(b)(iii), the termination of the right by the manager.

#### **Grant of new rights to the Secretary of State**

- 4.—**(1) This paragraph applies where, after the Secretary of State has consulted with the manager—
- (a) the manager refuses to grant a right to the Secretary of State; and
  - (b) the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the right being granted to the Secretary of State.
- (2) The Secretary of State may give notice to the manager in writing stating—
- (a) that the Secretary of State requires the right to be granted;
  - (b) the Secretary of State’s reasons for requiring the right to be granted; and

- (c) the terms and conditions on which the right is to be granted, including—
  - (i) the date on which the right is to begin (which must not be any earlier than one month after the day on which the notice is given), and
  - (ii) the term for which the right is to be granted.
- (3) If the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the reasons mentioned in sub-paragraph (2)(b) not being made public—
  - (a) the Secretary of State must state that view in the notice, and
  - (b) sub-paragraph (2)(b) does not apply.
- (4) The terms and conditions mentioned in sub-paragraph (2)(c) must provide that the Secretary of State is to pay market value for the right.
- (5) Where notice is given under sub-paragraph (2), a right is deemed to be granted by the manager on the terms and conditions specified in the notice.
- (6) Sub-paragraph (5) is subject to any alternative agreement which the manager and the Secretary of State may reach.

#### **Acquisition of third party rights by the Secretary of State**

- 5.—(1) This paragraph applies where, after the Secretary of State has consulted with a person—
  - (a) that person refuses to assign or sell any right to the Secretary of State at market value; and
  - (b) the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the right being so assigned or sold.
- (2) The Secretary of State may give notice to the person in writing stating—
  - (a) that the Secretary of State requires the right to be assigned or sold;
  - (b) the Secretary of State's reasons for requiring the right to be so assigned or sold; and
  - (c) the terms and conditions on which the right is to be assigned or sold, including the date on which the assignation or sale is to occur (which must not be any earlier than one month after the day on which the notice is given).
- (3) If the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the reasons mentioned in sub-paragraph (2)(b) not being made public—
  - (a) the Secretary of State must state that view in the notice, and
  - (b) sub-paragraph (2)(b) does not apply.
- (4) The terms and conditions mentioned in sub-paragraph (2)(c) must provide that the Secretary of State is to pay market value for the right.
- (5) Where notice is given under sub-paragraph (2), the right is deemed to be assigned or sold by the person on the terms and conditions specified in the notice.
- (6) Sub-paragraph (5) is subject to any alternative agreement which the person and the Secretary of State may reach.

#### **Grant of new rights to third parties**

- 6.—(1) This paragraph applies where the manager is asked to do any of the following—
  - (a) to grant a right to a person,
  - (b) to vary a right of a person,

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- (c) to agree to the transfer of a right from one person to another,
  - (d) to agree to any plan or policy which would involve any of the matters in paragraphs (a) to (c).
- (2) If the manager considers that the request is likely to affect any defence operations or capabilities, the manager must notify the Secretary of State in writing of the request before responding to that request.
- (3) In making the consideration under sub-paragraph (2), the manager must have regard to any information which the Secretary of State has provided to the manager about defence operations and capabilities.
- (4) No later than 30 days after the day on which the Secretary of State is notified under sub-paragraph (2), and after the Secretary of State has consulted with the manager—
- (a) the Secretary of State may inform the manager in writing of the effects which the Secretary of State considers the request will have on defence operations or capabilities; or
  - (b) if the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the matters in paragraph (a) not being made public, the Secretary of State may inform the manager in writing—
    - (i) of that view, and
    - (ii) (where relevant) of the Secretary of State’s opposition to the request.
- (5) The manager—
- (a) must have regard to any duly-made representation from the Secretary of State; and
  - (b) unless the manager proposes to reject the request, must notify the Secretary of State in writing of its proposed decision.
- (6) After notifying the Secretary of State under sub-paragraph (5)(b), the manager must not make the decision until the manager receives—
- (a) a direction under sub-paragraph (8), or
  - (b) written confirmation that the Secretary of State has no objection to the proposed decision (whether in a notice under paragraph 8(5)(b)(i) or otherwise).
- (7) Sub-paragraph (8) applies if the Secretary of State—
- (a) receives a notification under sub-paragraph (5)(b); and
  - (b) is of the view that, for reasons of defence or national security, there is an overriding public interest in the manager’s proposed decision being amended.
- (8) The Secretary of State may direct the manager in writing to make its decision in accordance with the terms of the direction.
- (9) Any direction under sub-paragraph (8)—
- (a) must state the Secretary of State’s reasons for making the direction; or
  - (b) if the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in those reasons not being made public, must state that view.
- (10) The manager must comply with any direction made under sub-paragraph (8).
- (11) Sub-paragraph (10) is subject to any alternative agreement which the manager and the Secretary of State may reach and accordingly the Secretary of State may withdraw or vary any direction made under sub-paragraph (8).
- (12) In this paragraph, a “duly-made representation” means a representation made in accordance with sub-paragraph (4).

### **Use of Scottish assets by the manager**

- 7.—(1) This paragraph applies where the manager proposes to do any of the following—
- (a) to exercise a right which has not previously been exercised by the Commissioners or the manager,
  - (b) to vary the existing exercise of a right,
  - (c) to agree to any plan or policy which would involve any of the matters in paragraph (a) or (b).
- (2) If the manager considers that the proposal is likely to affect any defence operations or capabilities, the manager must notify the Secretary of State in writing of the proposal before starting to implement that proposal.
- (3) In making the consideration under sub-paragraph (2), the manager must have regard to any information which the Secretary of State has provided to the manager about defence operations and capabilities.
- (4) No later than 30 days after the day on which the Secretary of State is notified under sub-paragraph (2), and after the Secretary of State has consulted with the manager—
- (a) the Secretary of State may inform the manager in writing of the effects which the Secretary of State considers the proposal will have on defence operations or capabilities; or
  - (b) if the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the matters in paragraph (a) not being made public, the Secretary of State may inform the manager in writing—
    - (i) of that view, and
    - (ii) (where relevant) of the Secretary of State's opposition to the proposal.
- (5) The manager—
- (a) must have regard to any duly-made representation from the Secretary of State; and
  - (b) unless the manager decides to abandon the proposal, must notify the Secretary of State in writing of how it proposes to act.
- (6) After notifying the Secretary of State under sub-paragraph (5)(b), the manager must not take any action until the manager receives—
- (a) a direction under sub-paragraph (8), or
  - (b) written confirmation that the Secretary of State has no objection to the proposed action (whether in a notice under paragraph 8(5)(b)(ii) or otherwise).
- (7) Sub-paragraph (8) applies if the Secretary of State—
- (a) receives a notification under sub-paragraph (5)(b); and
  - (b) is of the view that, for reasons of defence or national security, there is an overriding public interest in the manager's proposed action being amended.
- (8) The Secretary of State may direct the manager in writing to act in accordance with the terms of the direction.
- (9) Any direction under sub-paragraph (8)—
- (a) must state the Secretary of State's reasons for making the direction; or
  - (b) if the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in those reasons not being made public, must state that view.
- (10) The manager must comply with any direction made under sub-paragraph (8).

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(11) Sub-paragraph (10) is subject to any alternative agreement which the manager and the Secretary of State may reach and accordingly the Secretary of State may withdraw or vary any direction made under sub-paragraph (8).

(12) In this paragraph, a “duly-made representation” means a representation made in accordance with sub-paragraph (4).

## **Procedure**

8.—(1) This paragraph applies where the Secretary of State proposes—

- (a) to give notice under paragraph 3(2), 4(2) or 5(2); or
- (b) to make a direction under paragraph 6(8) or 7(8).

(2) Before making the relevant decision, the Secretary of State must notify the manager and any relevant person in writing of the decision which the Secretary of State proposes to make.

(3) No later than 30 days after the day on which notification is given under sub-paragraph (2), an interested party may make representations to the Secretary of State giving reasons for those representations.

(4) The Secretary of State must have regard to any duly-made representations.

(5) No later than 60 days after the day on which the last duly-made representation is made, the Secretary of State must—

- (a) make the relevant decision; and
- (b) if the decision concerns—
  - (i) a notice under paragraph 5(2) or a direction under paragraph 6(8), notify the manager and the relevant person in writing of that decision,
  - (ii) a direction under paragraph 7(8), notify the manager.

(6) In this paragraph—

“duly-made representation” means a representation made in accordance with sub-paragraph (3);

“interested party” means—

- (a) the manager, or
- (b) a relevant person;

“relevant decision” means a decision—

- (a) whether to give notice as mentioned in sub-paragraph (1)(a), or
- (b) whether to make a direction as mentioned in sub-paragraph (1)(b); and

“relevant person” means—

- (a) in relation to a notice under paragraph 5(2), the person to whom the notice is to be given, and
- (b) in relation to a direction under paragraph 6(8), the person whose request is to be determined in accordance with the terms of the direction.

## **Disagreement**

9.—(1) This paragraph applies where—

- (a) the Secretary of State is required to pay market value for a right, and
- (b) there is a disagreement about the calculation of that market value.

(2) The disagreement must be referred to—

- (a) such person as the parties to the disagreement may agree, or
  - (b) if no person is agreed, such person as may be nominated, on the joint application of the parties, by the Royal Institution of Chartered Surveyors.
- (3) The person to whom the disagreement is referred may charge a fee in respect of its consideration of the disagreement and may apportion the fee between the parties as it considers appropriate.

### **Annual report**

**10.**—(1) Each reporting year the Secretary of State must prepare a report about the exercise of the Secretary of State’s powers under this Part.

(2) But a report is not required for a year if the Secretary of State did not exercise any of those powers in relation to that year.

(3) A report must not identify, or enable the identification of, any person (other than the manager) unless that person has consented to being so identified.

(4) Subject to sub-paragraph (3), each report must contain the following information—

- (a) the powers which the Secretary of State has exercised during the reporting year;
- (b) the number of occasions on which those powers have been exercised; and
- (c) in respect of each such occasion—
  - (i) the reasons why the power was exercised, and
  - (ii) the amount of any payment made by the Secretary of State.

(5) If the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the reasons mentioned in sub-paragraph (4)(c)(i) not being included in the report—

- (a) the Secretary of State must state that view in the report, and
- (b) sub-paragraph (4)(c)(i) does not apply.

(6) The Secretary of State must lay a copy of each report before Parliament and the Scottish Parliament.

(7) In this paragraph, “reporting year” means a period of 12 months ending with 31st March.

## **PART 2**

### **Consideration payable under the Electronic Communications Code**

#### **Interpretation**

**11.**—(1) In this Part—

“agreement” means an agreement under paragraph 11(2) of the electronics communications code (appropriate authority agrees in relation to a Crown interest to the exercise of a right conferred under paragraph 11(1) of the code in respect of tidal waters); and

“electronic communications code” has the same meaning as in section 106 of the Communications Act 2003(2).

(2) Terms used in this Part which are also used in the electronic communications code have the same meaning as in the code.

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(2) 2003 c.21.

## **Modifications of the electronic communications code**

12. The electronic communications code has effect subject to the modifications in paragraphs 13 and 14.

## **Consideration payable to the manager in connection with an agreement**

13. Any consideration requested by the manager in connection with an agreement in respect of any of the Scottish assets must not exceed 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.

## **Failure to agree consideration: tidal waters**

14.—(1) This paragraph applies where, in connection with an agreement in respect of any of the Scottish assets, the manager and the operator cannot agree the consideration to be paid by the operator to the manager.

(2) The manager or the operator may apply to the appropriate person for a determination of the consideration to be paid.

(3) An application under sub-paragraph (2) must be made in writing and must include—

- (a) the proposed terms of the agreement, and
- (b) the reasoned evidence of the operator and of the manager as to what each respectively considers should be the appropriate amount of consideration for the agreement.

(4) As soon as reasonably practicable after receiving a duly-made application, the appropriate person must—

- (a) determine the best consideration in money or money's worth which can reasonably be obtained by the manager, having regard to all the circumstances of the case but ignoring for that purpose any element of monopoly value which may exist; and
- (b) notify the manager and the operator in writing of its determination and the reasons for it.

(5) If the agreement mentioned in sub-paragraph (1) (or an agreement in substantially the same form) is concluded following a determination under sub-paragraph (4), the consideration payable by the operator must not be more than the consideration notified under sub-paragraph (4)(b).

(6) The appropriate person may charge a fee in respect of its consideration of an application under sub-paragraph (4) and may apportion the fee between the manager and the operator as it considers appropriate.

(7) In this paragraph—

“appropriate person” means—

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

“duly-made application” means an application which is made in accordance with the requirements in sub-paragraph (3).



## PART 3

### Pipeline payments

#### Interpretation

**15.** In this Part—

“agreement” means an agreement between the manager and a pipeline operator which grants rights to the pipeline operator—

- (a) in, under or over any part of the Scottish foreshore, Scottish coastal waters or the Scottish zone, and
- (b) in connection with the construction, laying, maintenance or use of a pipeline;

“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;

“petroleum” has the same meaning as in section 1 of the Petroleum Act 1998(3);

“pipeline operator” means a person who is, or will be, operating a pipeline for the conveyance of petroleum; and

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

#### Notification of objection to payment

**16.—**(1) This paragraph applies where—

- (a) the manager proposes to require, or has required, a payment from a pipeline operator in connection with an agreement; and
- (b) the pipeline operator notifies the Treasury in writing of that operator’s objection to the payment and the reasons in writing for that objection.

(2) As soon as reasonably practicable after receiving a notification and the related reasons under sub-paragraph (1), the Treasury must notify the manager in writing of the objection.

(3) After receiving a notification under sub-paragraph (2)—

- (a) the manager must notify the Treasury in writing of the amount of the payment and of how that amount was calculated no later than one month after the day on which the Treasury notify the manager under sub-paragraph (2); and
- (b) if the payment (or any part of the payment) has already been required but not yet made, the manager must immediately suspend the payment.

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(3) 1998 c.17.

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### **No notice of objection to payment**

17. Unless the Treasury give notice in accordance with paragraph 18, the manager may require the payment, or any outstanding part of the payment, after the expiration of—

- (a) the period of three months beginning on the day on which notification is given under paragraph 16(3)(a), or
- (b) such shorter period as the Treasury may allow.

### **Determination of market value**

18. 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 17.

19. Where the Treasury have given notice in accordance with paragraph 18, the appropriate person must determine an amount which is market value for the payment.

20.—(1) In making the determination under paragraph 19, 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; and
- (c) any duly-made representation provided to the appropriate person by any of the following—
  - (i) the manager,
  - (ii) the pipeline operator,
  - (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.

21. As soon as reasonably practicable after making the determination under paragraph 19, the appropriate person must notify the following persons of the determination—

- (a) the manager,
- (b) the pipeline operator, and
- (c) the Treasury.

22. The manager must—

- (a) ensure that the payment does not exceed the amount determined under paragraph 19; and
- (b) if the pipeline operator has already paid more than market value, as soon as reasonably practicable the manager must refund the excess to the operator.

23. If the manager fails to comply with paragraph 22(b), the pipeline operator may recover the excess as a civil debt.

### **Fees of the appropriate person**

24. The appropriate person may charge a fee in respect of its determination under paragraph 19 and may apportion that fee as it considers appropriate between any of the following—

- (a) the manager,
- (b) the pipeline operator,
- (c) the Treasury.

## **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(4), 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.

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(4) 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).

### **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.

### **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.