

ENERGY ACT 2013

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

Part 2: Electricity Market Reform

Chapter 4: Investment contracts

20. The provisions in this Chapter are aimed at addressing the risk of hiatus in investment in low carbon electricity generation before the CFD regime (“the enduring regime”) is fully established under the regulation-making powers provided for in Chapter 2 of Part 2 of the Act. Therefore, the provisions here are transitional in the sense in that they are intended to relate to arrangements entered into during a relatively short period. Investment contracts must have been entered into by the Secretary of State by 31st December 2015, or if earlier the date on which regulations made under section 10(3) first define “eligible generator” (i.e. the type of electricity generator who may benefit from a CFD under the enduring regime) – see *paragraph 1(1)(a)* of Schedule 2.
21. “Investment contracts” are contracts with an electricity generator entered into by the Secretary of State (see *paragraph 1(1)* of Schedule 2). Key characteristics include that a contract must contain an obligation for the parties to make payments to each other based on the difference between a strike price and a reference price in relation to electricity generated (see *paragraph 1(1)(c)*), that this obligation must be conditional upon Schedule 2 coming into force (where the contract is entered into before then) – see *paragraph 1(2)* and that the contract has been laid before Parliament together with a statement about certain matters (see *paragraph 1(1)(d), (5) and (6)* and section 5(2)). For example, the statement must set out that the Secretary of State is of the opinion that payments which would be made under the contract would encourage low carbon electricity generation (see *paragraph 1(6)(a)*).
22. The Act (see Part 4 of Schedule 2) makes provision for investment contracts to be transferred to a CFD counterparty when one has been designated under section 7(1), or alternatively to a person designated by the Secretary of State as an investment contract counterparty. Once the CFD counterparty has been designated, and certain other conditions have been satisfied, the Secretary of State will be under a duty to transfer investment contracts to the CFD counterparty.
23. The provisions in Chapter 4 will provide a tool that may be used to avert any investment hiatus because they will enable the Secretary of State to give effect to investment contracts entered into before the establishment of the enduring regime (including contracts entered into before enactment of the Act). They do this by providing various powers and authorisations, particularly relating to the financing of obligations under investment contracts (see *paragraphs 7 and 20* of Schedule 2). In containing these particular provisions relating to investment contracts, the Act can provide a timely and significant measure of confidence regarding the revenue stream that a project is to receive, to enable investors/developers to make positive final investment decisions in relation to low carbon electricity generation projects in advance of the enduring regime.