

ENERGY ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Electricity Market Reform

Chapter 4: Investment contracts

Schedule 2, Part 1

Paragraph 1: Meaning of “investment contract”

186. This paragraph defines what an “investment contract” must be for the purposes of this Schedule. It does this by laying down, for example, requirements about who the parties are to be to such contracts, about the content of contracts, and requirements about being laid before Parliament. The restrictions here are important because Parts 2 to 4 of the Schedule contain a number of regulation-making powers that may be exercised only in relation to contracts that meet the defining characteristics of “investment contracts”, and Part 5 of the Schedule provides for the Secretary of State to incur expenditure in connection with “investment contracts”.
187. Specifically, in terms of their contents and nature, an investment contract is a contract with an electricity generator (as defined in *sub-paragraph (3)*) which:
- is entered into by the Secretary of State before the 31st December 2015 or if earlier, the date on which regulations are first made under section 10(3) defining an “eligible generator”. An “eligible generator” is the type of person who may benefit from a CFD under the regulations relating to the enduring regime;
 - has been entered into with the consent of the (Northern Ireland) Department of Enterprise, Trade and Investment if it relates to an electricity generating station in Northern Ireland (which is defined to include territorial waters – see *sub-paragraph (3)*, as well as *sub-paragraph (1)(b)*);
 - contains 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 *sub-paragraph (1)(c)* and, for a definition of these prices, *sub-paragraph (3)*). Where the investment contract is entered into before the coming into force of Schedule 2, this payment obligation must be expressed to be conditional on Schedule 2 being in force (see *sub-paragraph (2)*).
188. It is worth noting here that an electricity generator is defined in *sub-paragraph (3)* in a way to cover not simply someone who is directly involved in the generation of electricity, but also and more broadly speaking (for example) a person intending, at the time the contract is entered into, to establish, or participate in the operation of a new or altered electricity generating station, and any person who has an interest in a company consisting of these aforementioned persons. Under Schedule 1 to the Interpretation Act 1978, “person” is defined to include persons corporate, such as companies. If an investment contract is entered into with more than one person, the

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

payment obligation referred to in *sub-paragraph (1)(c)* must be an obligation on a party that is an electricity generator as defined in *sub-paragraph (3)* and the Secretary of State (see *sub-paragraph (4)*).

189. A contract is only an “investment contract” if it has been laid before Parliament, accompanied by a statement meeting the requirements in *sub-paragraph (6)* (see *sub-paragraphs (1)(d)* and *(5)(a)*). However, it is not necessarily the case that the whole contract must have been laid before Parliament in order for it to constitute “an investment contract”. *Sub-paragraph (5)(b)* means that certain confidential or commercially sensitive information which is contained in the contract may be omitted from it when it is laid before Parliament (see also *paragraph 3* of the Schedule for the definition of “confidential information”).
190. The statement that must be laid in Parliament together with the contract needs to cover various matters, to provide a measure of transparency about the decision-making process. For example, the statement will need to specify that the Secretary of State considers that payments which would be made under the investment contract which is being laid before Parliament would encourage low carbon electricity generation and that without the contract there is a significant risk of this electricity generation being delayed, or of it not occurring at all. Low carbon electricity generation is defined in *sub-paragraph (7)* to mean electricity generation which in the opinion of the Secretary of State will contribute to a reduction in emissions of greenhouse gases, as defined in section 92(1) of the Climate Change Act 2008. “Greenhouse gases” includes, for example, carbon dioxide and methane.
191. In addition, the Secretary of State must summarise in any statement the regard he or she has had in deciding to enter into a contract to the matters set out in section 5(2) of the Act (see *sub-paragraph (6)(c)*) – namely, the likely costs to consumers of ensuring security of supply to consumers in the United Kingdom, certain statutory targets relating to greenhouse gas emissions contained in the Climate Change Act 2008 and the target relating to the use of renewable energy set out in Article 3(1) and Annex 1 to “the renewable directives” (see the definition in section 5(3)).
192. Finally (though publication here is not a defining characteristic of an investment contract), the Secretary of State is obliged to publish any investment contracts in the form in which they have been laid before Parliament (see *sub-paragraph (8)*).