

ENERGY ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Electricity Market Reform

Chapter 4: Investment contracts

Schedule 2, Part 3

Paragraph 14: Duties and liabilities of an investment contract counterparty and a CFD counterparty

222. This paragraph allows for regulations to tightly define and limit the scope of the behaviour of an investment contract counterparty, or a CFD counterparty which is acting as a counterparty in relation to an investment contract.
223. The regulation-making power is designed to ensure that controls can be imposed on counterparties to ensure that suppliers are properly protected from potential for increased costs due to variation of contracts, whilst still enabling decisions to be made by the Secretary of State to permit variation where it is appropriate to do so. This paragraph only covers regulation of the behaviour of the counterparty and does not enable the Secretary of State, through regulations, to vary any investment contract without the consent of the generator in question.
224. *Sub-paragraph (2)* places a duty on an investment contract counterparty or CFD counterparty to exercise its functions to ensure that it can meet its liabilities under an investment contract. Those functions are principally those conferred under or by virtue of *paragraph 7* (supplier obligation) in relation to the ability of the CFD counterparty or investment contract counterparty to recover sums from licenced electricity suppliers. “Liabilities” in this context includes all liabilities under an investment contract. For these purposes, liabilities will exist in respect of any sums that are owed at a particular time by the counterparty under the investment contract, irrespective of whether they have yet become payable in accordance with any payment provisions it contains.
225. *Sub-paragraph (3)(c)* enables regulations to make provision about the making of directions to an investment contract counterparty or CFD counterparty. This will enable specific directions to be given in relation to particular contracts or matters (such as where a generator has proposed a variation to the contract and the Secretary of State wishes to require the counterparty to agree to it).
226. *Sub-paragraph (5)* places a duty on the Secretary of State. The regulations that he or she makes must include such provision as he or she considers necessary to ensure that the investment contract counterparty or CFD counterparty can meet its liabilities under investment contracts. As set out in relation to *sub-paragraph (2)* above the reference to liabilities means all sums which are owed under an investment contract.