

# ENERGY ACT 2013

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: Electricity Market Reform**

##### *Chapter 6: Access to markets etc*

##### *Section 49: Power to modify licence conditions etc: market participation and liquidity*

257. This section enables the Secretary of State to modify electricity generation and supply licences and to amend electricity industry codes to facilitate participation and promote liquidity in the wholesale electricity market.
258. *Subsection (1)* allows the Secretary of State to modify the conditions of particular electricity generation and supply licences and the standard conditions contained in such licences and to amend electricity industry codes (such as the Balancing and Settlement Code), which are documents maintained in accordance with the conditions of such licences, and agreements that give effect to industry codes.
259. *Subsection (2)* sets out the purposes for which the Secretary of State may use the modification power, these being to:
- facilitate participation in the wholesale electricity market in Great Britain, both by licence holders and others (such as exempt suppliers and generators); and
  - promote liquidity in that market.
260. *Subsection (3)* sets out a non-exhaustive list of the types of licence modification that the Secretary of State may choose to make when exercising the powers in *subsection (1)*. These include:
- imposing obligations on electricity generators or suppliers to either sell or purchase electricity, including obligations to sell or purchase electricity on certain terms or in particular circumstances (such as a requirement to sell a proportion of electricity on a particular exchange or to sell particular products at particular times);
  - restrictions on generators and suppliers selling or purchasing electricity to or from their group undertakings; and
  - imposing obligations to disclose or publish information (such as information about transactions in the wholesale electricity market).
261. *Subsection (4)* provides additional clarification on the types of transactions that may be subject to the restrictions referred to in *subsection (3)(b)*.

***Section 50: Power to modify licence conditions etc to facilitate investment in electricity generation***

262. This section enables the Secretary of State to modify the conditions of electricity supply licences and related industry codes for the purpose of facilitating investment in electricity generation by means of a Power Purchase Agreement (PPA) scheme.
263. *Subsection (1)* allows the Secretary of State to modify the conditions of particular supply licences and the standard conditions incorporated in such licences and also to amend electricity industry codes, being documents maintained in accordance with the conditions of such supply licences, and agreements that give effect to industry codes.
264. *Subsection (2)* sets out the purpose for which the Secretary of State may use the modification power. This is limited to facilitating investment in electricity generation by means of a power purchase agreement scheme.
265. *Subsection (3)* explains that
- a PPA scheme is a scheme established by supply licence conditions and regulations for promoting the availability to electricity generators of power purchase agreements;
  - a PPA is an arrangement under which a licensed supplier agrees to purchase electricity generated by an electricity generator at a discount to a prevailing market price.
266. *Subsection (4)* sets out the nature of provisions that may be made in licence or code modifications under this section, which include:
- the eligibility of an electricity generator to enter into a PPA under the scheme;
  - the terms of any PPA to be entered into under the scheme, including provision for determining the price at which electricity is to be purchased under the agreement and the duration of any such agreement;
  - the circumstances in which a licensed supplier is or may be required or permitted to enter, or offer to enter, into a PPA under the scheme;
  - the provision of information in connection with the scheme.
267. *Subsections (5) and (6)* set out further details about the process for determining which licensed supplier or suppliers is or are required or permitted to enter, or offer to enter, into a PPA agreement with an electricity generator in any particular case and for this determination to be made by one or more of the Secretary of State, the Authority, and the electricity generator or by auction or other competitive process.
268. *Subsection (7)* sets out that a licensed supplier under section 50 and 51 means the holder of a licence under Section 6(1)(d) of the Electricity Act 1989.

***Section 51: Power purchase agreement scheme: regulations***

269. This section enables the Secretary of State to make regulations in connection with any modifications made under section 50 for or in connection with a PPA scheme.
270. *Subsection (2)* sets out that such regulations may include provision for:
- apportioning amongst licensed suppliers the costs or benefits of any licensed supplier in connection with the scheme;
  - conferring functions on the Secretary of State or the Authority;
  - the delegation of functions conferred on the Secretary of State or the Authority by the regulations or by virtue of section 50;

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

- obligations imposed by the regulations on licensed suppliers to be enforceable as if they were relevant requirements on a regulated person under section 25 of the Electricity Act 1989;
  - requiring the provision of information in connection with the scheme.
271. *Subsection (3)* explains that provision may be included in regulations for requiring licensed suppliers to pay a levy to the Authority or conferring an entitlement on them to receive a payment from it.
272. *Subsection (4)* sets out that regulations may include provision for the Secretary of State or the Authority to determine what is to be taken into account as a cost or benefit of any licensed supplier in connection with the scheme.
273. *Subsection (5)* enables the Secretary of State to make different provisions in regulations for different cases or circumstances. It also enables the Secretary of State to include in regulations provisions of an incidental, supplementary, consequential or transitional nature.
274. *Subsections (6) and (7)* require that the Secretary of State must consult relevant persons, including licensed suppliers and the Authority, before making any regulations in connection with any modifications made under section 50 and confirms that this requirement can be satisfied by consultation before the passing of the Act.
275. *Subsections (8) and (9)* provide that regulations must be made by statutory instrument and are subject to the negative parliamentary procedure.

***Section 52: Power Purchase agreement scheme: disclosure of information***

276. This section extends section 105 of the Utilities Act 2000 to include sections 50 and 51 of the Energy Act 2013 in relation to general restrictions on disclosure of information, by inserting references to these sections into *subsections (1)(a) and (3)(a)* of the Act.

***Section 53: Principal objective and general duties: power purchase agreement scheme***

277. This section requires the Secretary of State and the Authority to apply the principal objective and comply with the general duties laid out under sections 3A to 3D of the Electricity Act 1989, when exercising functions so far as they relate to a power purchase agreement scheme.

***Section 54: Licence modifications under sections 49 and 50: further provisions***

278. This section sets out additional provisions that apply to both sections 49 and 50 and clarifies how these licence modification powers may be exercised.
279. *Subsection (1)* allows the Secretary of State to provide for a new document to be required to be prepared and maintained in accordance with the conditions of a licence. This would enable the Secretary of State to create a new industry code, for example to set out the detailed arrangements of an auction in which suppliers or generators are obliged, by the conditions of their licences, to participate.
280. *Subsection (2)* requires the Secretary of State to consult affected licensees, the Authority, and other relevant persons, before making modifications under section 49 or 50.
281. See also section 64, which sets out other general provision on licence and code modification powers.