



# Energy Act 2013

## 2013 CHAPTER 32

### PART 2

#### ELECTRICITY MARKET REFORM

### CHAPTER 1

#### GENERAL CONSIDERATIONS

#### **5 General considerations relating to this Part**

(1) In exercising the function of making—

- (a) regulations under section 6;
- (b) an order under section 23;
- (c) a modification under section 26;
- (d) regulations under section 27;
- (e) a modification under section 37;
- (f) a modification under section 45;
- (g) an order under section 46;

the Secretary of State must have regard to the matters mentioned in subsection (2).

(2) The matters are—

- (a) the duties of the Secretary of State under sections 1 and 4(1)(b) of the Climate Change Act 2008 (carbon targets and budgets);
- (b) the duty of the Secretary of State under section 1(1) of this Act (decarbonisation target range);
- (c) ensuring the security of supply to consumers of electricity;
- (d) the likely cost to consumers of electricity;
- (e) the target set out in Article 3(1) of, and Annex 1 to, the renewables directive (use of energy from renewable sources).

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- (3) In subsection (2)(e) “the renewables directive” means Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources.
- (4) The Secretary of State must before 31st December in each year, beginning with 2014, prepare and lay before Parliament a report setting out how the Secretary of State has carried out during the year the functions under this Part of this Act.
- (5) The Secretary of State must publish the report and send a copy of it to the Department of Enterprise, Trade and Investment, the Scottish Ministers and the Welsh Ministers.

## CHAPTER 2

### CONTRACTS FOR DIFFERENCE

#### 6 Regulations to encourage low carbon electricity generation

- (1) The Secretary of State may for the purpose of encouraging low carbon electricity generation make regulations about contracts for difference between a CFD counterparty and an eligible generator.
- (2) A contract for difference is a contract—
  - (a) certain payments under which are to be funded by electricity suppliers (see further section 9), and
  - (b) which a CFD counterparty is required to enter into by virtue of section 10 or 14;
 and such a contract is referred to in this Chapter as a “CFD”.
- (3) For the purposes of this Chapter—
  - “CFD counterparty” is to be construed in accordance with section 7(2);
  - “eligible generator” is to be construed in accordance with section 10(3);
  - “low carbon electricity generation” means electricity generation which in the opinion of the Secretary of State will contribute to a reduction in emissions of greenhouse gases;
  - “regulations” means regulations under this section.
- (4) In subsection (3) “greenhouse gas” has the meaning given by section 92(1) of the Climate Change Act 2008.
- (5) The provision which may be made by regulations includes, but is not limited to, the provision described in this Chapter.
- (6) Regulations may—
  - (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (7) Regulations are to be made by statutory instrument.

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- (8) An instrument containing regulations of any of the following kinds may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament (in each case, whether or not the regulations also make other provision)—
- (a) the first regulations which make provision falling within each of the following—
    - (i) section 14;
    - (ii) section 15;
    - (iii) section 19;
    - (iv) section 20;
  - (b) regulations which make provision falling within—
    - (i) section 9;
    - (ii) section 10;
    - (iii) section 12;
    - (iv) section 13;
    - (v) section 17;
    - (vi) section 18;
    - (vii) section 21;
    - (viii) section 22;
    - (ix) section 23.
- (9) Any other instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) If, but for this subsection, an instrument containing regulations would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

## **7 Designation of a CFD counterparty**

- (1) The Secretary of State may by order made by statutory instrument designate an eligible person to be a counterparty for contracts for difference.
- (2) A person designated under this section is referred to in this Chapter as a “CFD counterparty”.
- (3) A person is eligible if the person is—
- (a) a company formed and registered under the Companies Act 2006, or
  - (b) a public authority, including any person any of whose functions are of a public nature.
- (4) A designation may be made only with the consent of the person designated.
- (5) The Secretary of State may exercise the power to designate so that more than one designation has effect under this section, but only if the Secretary of State considers it necessary for the purposes of ensuring that—
- (a) liabilities under a CFD are met,
  - (b) arrangements entered into for purposes connected to a CFD continue to operate, or
  - (c) directions given to a CFD counterparty continue to have effect.

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- (6) A designation ceases to have effect if—
  - (a) the Secretary of State by order made by statutory instrument revokes the designation, or
  - (b) the person withdraws consent to the designation by giving not less than 3 months' notice in writing to the Secretary of State.
- (7) At any time after the first designation has effect, the Secretary of State must, so far as reasonably practicable, exercise the power to designate so as to ensure that at least one designation has effect under this section.
- (8) Schedule 1 (which makes provision about schemes to transfer property, rights and liabilities from a person who has ceased to be a CFD counterparty to a person who is a CFD counterparty) has effect.
- (9) As soon as reasonably practicable after a designation ceases to have effect the Secretary of State must make a transfer scheme under Schedule 1 to ensure the transfer of all rights and liabilities under any CFD to which the person who has ceased to be a CFD counterparty was a party.
- (10) Regulations may include provision about the period of time for which, and the circumstances in which, a person who has ceased to be a CFD counterparty is to continue to be treated as a CFD counterparty for the purposes of the regulations.

## **8 Duties of a CFD counterparty**

- (1) A CFD counterparty must act in accordance with—
  - (a) any direction given by the Secretary of State by virtue of this Chapter;
  - (b) any provision included in regulations.
- (2) A CFD counterparty must exercise the functions conferred by or by virtue of this Chapter to ensure that it can meet its liabilities under any CFD to which it is a party.
- (3) In this Chapter “national system operator” means the person operating the national transmission system for Great Britain (and for this purpose “transmission system” has the same meaning as in EA 1989 - see section 4(4) of that Act).

## **9 Supplier obligation**

- (1) Regulations must make provision for electricity suppliers to pay a CFD counterparty for the purpose of enabling the counterparty to make payments under CFDs.
- (2) Regulations may make provision for electricity suppliers to pay a CFD counterparty for the purpose of enabling the counterparty—
  - (a) to meet such other descriptions of its costs as the Secretary of State considers appropriate;
  - (b) to hold sums in reserve;
  - (c) to cover losses in the case of insolvency or default of an electricity supplier.
- (3) In subsection (2)(a) “costs” means costs in connection with the performance of any function conferred by or by virtue of this Chapter.
- (4) Regulations may make provision to require electricity suppliers to provide financial collateral to a CFD counterparty (whether in cash, securities or any other form).

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- (5) Regulations which make provision by virtue of subsection (1) for the payment of sums by electricity suppliers must impose on the CFD counterparty a duty in relation to the collection of such sums.
- (6) Provision made by virtue of this section may include provision for—
- (a) a CFD counterparty to determine the form and terms of any financial collateral;
  - (b) a CFD counterparty to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed by an electricity supplier or are to be provided as financial collateral by an electricity supplier;
  - (c) the issuing of notices by a CFD counterparty to require the payment or provision of such amounts;
  - (d) the enforcement of obligations arising under such notices.
- (7) Provision made by virtue of subsection (6)(b) may provide for anything which is to be calculated or determined under the regulations to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.
- (8) Provision made by virtue of subsection (6)(d) may include provision—
- (a) about costs;
  - (b) about interest on late payments under notices;
  - (c) about references to arbitration;
  - (d) about appeals.
- (9) Any sum which—
- (a) an electricity supplier is required by virtue of regulations to pay to a CFD counterparty, and
  - (b) has not been paid by the date on which it is required by virtue of regulations to be paid,
- may be recovered from the electricity supplier by the CFD counterparty as a civil debt due to it.
- (10) In this section “electricity supplier”, subject to any provision made by regulations, means a person who is a holder of a licence to supply electricity under—
- (a) section 6(1)(d) of EA 1989, or
  - (b) Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)).

## **10 Direction to offer to contract**

- (1) The Secretary of State may, in accordance with provision made by regulations, direct a CFD counterparty to offer to contract with a person specified in the direction, on terms specified in the direction.
- (2) A person may be specified in a direction under subsection (1) only if that person is an eligible generator.
- (3) Regulations must make provision defining who is an “eligible generator” for the purposes of this Chapter.

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- (4) Regulations may make further provision about a direction under this section and in particular about—
  - (a) the circumstances in which a direction may or must be given;
  - (b) the terms which may or must be specified in a direction.
- (5) Provision falling within subsection (4) may include provision for—
  - (a) the determination of a matter on a competitive basis,
  - (b) calculations or determinations to be made under the regulations, including by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.
- (6) A direction may not be given under this section in relation to an electricity generating station in Northern Ireland unless the Department of Enterprise, Trade and Investment consent to the direction.
- (7) But regulations may, with the consent of that Department, include provision for circumstances in which consent under subsection (6) is not required.
- (8) In subsection (6) “Northern Ireland” includes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Northern Ireland.

## **11 Standard terms**

- (1) The Secretary of State may issue standard terms and conditions of CFDs (“standard terms”).
- (2) The Secretary of State may from time to time revise standard terms.
- (3) Standard terms issued or revised under this section must be in accordance with provision made in regulations.
- (4) In issuing or revising standard terms the Secretary of State must have regard to the matters mentioned in section 5(2).
- (5) The Secretary of State must publish standard terms as issued or revised under this section.
- (6) In publishing standard terms the Secretary of State may designate particular standard terms as terms that may not be modified under section 15.
- (7) Different standard terms may be issued for different categories of CFD.

## **12 CFD notifications**

- (1) The national system operator may, in accordance with provision made by regulations, give a notification to a CFD counterparty (a “CFD notification”) specifying—
  - (a) an eligible generator, and
  - (b) such other information as may be required for the purpose of making an offer under section 14 to contract with that generator.
- (2) A CFD notification must not be given if regulations made by virtue of section 23 prevent the giving of the notification.

- (3) Regulations may make further provision about CFD notifications and in particular provision about—
  - (a) the circumstances in which a CFD notification may or must be given;
  - (b) the kinds of information mentioned in subsection (1)(b) that must be specified in a CFD notification;
  - (c) appeals against decisions not to give CFD notifications.
- (4) A CFD notification may not be given by virtue of regulations under this section in relation to an electricity generating station in Northern Ireland unless the Department of Enterprise, Trade and Investment consent to the CFD notification.
- (5) But regulations may, with the consent of that Department, include provision for circumstances in which consent under subsection (4) is not required.
- (6) In subsection (4) “Northern Ireland” includes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Northern Ireland.

### **13 Allocation of CFDs**

- (1) Provision that may be included in regulations by virtue of section 12 includes in particular provision about how CFDs are to be allocated to eligible generators (and for this purpose a CFD is “allocated” to a generator if the generator is specified in a CFD notification).
- (2) Provision made by virtue of subsection (1) may include provision—
  - (a) conferring power on the Secretary of State to make rules (an “allocation framework”) about how CFDs are to be allocated;
  - (b) for different periods within which CFDs are to be allocated (“allocation rounds”);
  - (c) for different allocation frameworks to apply in respect of different allocation rounds;
  - (d) for the publication of allocation frameworks;
  - (e) about matters in relation to which provision may or must be made in an allocation framework.
- (3) Provision made by regulations by virtue of subsection (2) may impose requirements on the Secretary of State, including in particular—
  - (a) requirements as to the giving of notice before an allocation round is commenced;
  - (b) restrictions on the circumstances in which amendments may be made during an allocation round to an allocation framework or to any other matter relevant to an allocation round (including any amount by reference to which a limit on the CFDs allocated during the round is to be determined).
- (4) An allocation framework may—
  - (a) confer functions on the national system operator with respect to the allocation of CFDs;
  - (b) specify targets to be met or taken into account by the national system operator in giving CFD notifications by virtue of section 12, including targets relating to—
    - (i) the means by which electricity is generated;
    - (ii) the generating capacity of electricity generating stations;

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- (iii) the geographical location of electricity generating stations;
  - (c) make any provision that may be made by regulations by virtue of subsection (3).
- (5) An allocation framework may include provision for—
- (a) the determination of a matter on a competitive basis;
  - (b) calculations or determinations to be made under the framework, including by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the framework.
- (6) An allocation framework may—
- (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision and savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (7) Any power conferred by virtue of subsection (2) to make an allocation framework includes a power to amend, add to or remove an allocation framework.
- (8) Subsections (4) to (7) are subject to any provision contained in regulations.

#### **14 CFD notification: offer to contract on standard terms**

- (1) Where a CFD notification is given to a CFD counterparty under section 12, the CFD counterparty must, in accordance with provision made by regulations, offer to contract with the eligible generator specified in the notification on—
- (a) standard terms, or
  - (b) standard terms as modified in accordance with any modification agreement entered into between the CFD counterparty and the eligible generator for the purposes of the CFD notification (see section 15).
- (2) Regulations may make further provision about an offer to contract made under this section, including provision about—
- (a) how a CFD counterparty is to apply or complete standard terms in relation to the offer in accordance with information specified in a CFD notification;
  - (b) the time within which the offer must be made;
  - (c) how the eligible generator to whom it is made may enter into a CFD as a result of the offer;
  - (d) what is to happen if the eligible generator does not enter into a CFD as a result of it.
- (3) In this section, “standard terms”, in relation to a CFD notification, means standard terms published under section 11, determined in accordance with regulations as the standard terms that are to apply in relation to the CFD notification.

#### **15 Modification of standard terms**

- (1) This section applies where a person wishes to be specified as an eligible generator in a CFD notification (“the potential CFD notification”).



- (2) A CFD counterparty and the person may, in accordance with provision made by regulations, agree to modify standard terms for the purposes of any offer that would be required under section 14 if the potential CFD notification is given (a “modification agreement”).
- (3) A CFD counterparty may enter into a modification agreement providing for the modification of any particular standard term only if—
  - (a) the CFD counterparty is satisfied that—
    - (i) the effect of the modification is minor, and
    - (ii) the modification is necessary; and
  - (b) the standard term has not been designated under section 11 as a term that may not be modified under this section.
- (4) Regulations may make further provision about modification agreements, including—
  - (a) the circumstances in which a person may make an application for a modification agreement;
  - (b) the time by which an application must be made;
  - (c) the procedure to be followed, and the information to be given, by the person in making an application;
  - (d) how a CFD counterparty is to determine an application (including how it is to determine whether the effect of a modification is minor and whether it is necessary);
  - (e) the time by which determinations must be made;
  - (f) the form of modification agreements.
- (5) Provision made by virtue of subsection (4)(d) may include provision under which the CFD counterparty may make alternative proposals for modifications in response to an application.
- (6) In this section “modify” includes add to, alter or omit, and “modification” is to be read accordingly.

## **16 Sections 12 to 15: further provision**

Provision made by regulations by virtue of any of sections 12 to 15 may include provision for—

- (a) the determination of a matter on a competitive basis;
- (b) calculations or determinations to be made under the regulations, including by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.

## **17 Payments to electricity suppliers**

- (1) Regulations may make provision about the amounts which must be paid by a CFD counterparty to electricity suppliers.
- (2) Provision made by virtue of this section may—
  - (a) include provision for a CFD counterparty to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed by the CFD counterparty;

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- (b) provide for anything which is to be calculated or determined under the regulations to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.
- (3) In this section “electricity supplier”, subject to any provision made by regulations, means a person who is a holder of a licence to supply electricity under—
  - (a) section 6(1)(d) of EA 1989; or
  - (b) Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 ([S.I. 1992/231 \(N.I. 1\)](#)).

## **18 Application of sums held by a CFD counterparty**

- (1) Regulations may make provision for apportioning sums—
  - (a) received by a CFD counterparty from electricity suppliers under provision made by virtue of section 9;
  - (b) received by a CFD counterparty under a CFD, in circumstances where the CFD counterparty is unable fully to meet its liabilities under a CFD.
- (2) Provision made by virtue of subsection (1) may include provision about the meaning of “unable fully to meet its liabilities under a CFD”.
- (3) In making provision by virtue of subsection (1) the Secretary of State must have regard to the principle that sums should be apportioned in proportion to the amounts which are owed.
- (4) Regulations may make provision about the application of sums held by a CFD counterparty.
- (5) Provision made by virtue of subsection (4) may include provision that sums are to be paid, or not to be paid, into the Consolidated Fund.

## **19 Information and advice**

- (1) Regulations may make provision about the provision and publication of information.
- (2) Provision made by virtue of subsection (1) may include provision—
  - (a) for the Secretary of State to require the national system operator to provide advice to the Secretary of State;
  - (b) for the Secretary of State to require a CFD counterparty, the Authority, the Northern Ireland Authority for Utility Regulation or the Northern Ireland system operator to provide advice to the Secretary of State or any other person specified in the regulations;
  - (c) for the Secretary of State to require a CFD counterparty, the national system operator, the Authority, the Northern Ireland Authority for Utility Regulation, the Northern Ireland system operator or a generator who is party to a CFD to provide information to the Secretary of State or any other person specified in the regulations;
  - (d) for the national system operator to require information to be provided to it by a CFD counterparty, a generator who is party to a CFD or the Northern Ireland system operator;

- (e) for a CFD counterparty to require information to be provided to it by electricity suppliers or the Northern Ireland system operator;
- (f) for the classification and protection of confidential or sensitive information;
- (g) for the enforcement of any requirement imposed by virtue of paragraphs (a) to (f).

(3) In subsection (2)—

- (a) “Northern Ireland system operator” means the holder of a licence under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1));
- (b) “electricity supplier”, subject to any provision made by regulations, means a person who is a holder of a licence to supply electricity under—
  - (i) section 6(1)(d) of EA 1989; or
  - (ii) Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)).

(4) The prohibition on disclosure of information by—

- (a) section 105(1) of the Utilities Act 2000;
- (b) Article 63(1) of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6));

does not apply to a disclosure required by virtue of this section.

## 20 Functions of the Authority

Regulations may make provision conferring functions on the Authority for the purpose of offering advice to, or making determinations on behalf of, a party to a CFD.

## 21 Regulations: further provision

(1) Regulations may make provision—

- (a) to require a CFD counterparty to enter into arrangements or to offer to contract for purposes connected to a CFD;
- (b) specifying things that a CFD counterparty may or must do, or things that a CFD counterparty may not do;
- (c) conferring on the Secretary of State further powers to direct a CFD counterparty to do, or not to do, things specified in the regulations or the direction.

(2) Provision made by virtue of subsection (1)(b) or (c) includes provision requiring consultation with, or the consent of, the Secretary of State in relation to—

- (a) the determination of an application for a modification agreement under section 15;
- (b) the enforcement of obligations under a CFD;
- (c) a variation or termination of a CFD;
- (d) the settlement or compromise of a claim under a CFD;
- (e) the conduct of legal proceedings relating to a CFD;
- (f) the exercise of rights under a CFD.

(3) Regulations must include such provision as the Secretary of State considers necessary to ensure that a CFD counterparty can meet its liabilities under any CFD to which it is a party.

## 22 Enforcement

- (1) Regulations may make provision for requirements under the regulations to be enforceable—
  - (a) by the Authority as if they were relevant requirements on a regulated person for the purposes of section 25 of EA 1989;
  - (b) by the Northern Ireland Authority for Utility Regulations as if they were relevant requirements on a regulated person for the purposes of Article 41A of the [Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419 \(N.I. 6\)\)](#).
- (2) Provision made by virtue of subsection (1)(a) may include provision about the enforcement of requirements imposed on the national system operator.
- (3) Provision made by virtue of subsection (1)(b) may be made in relation only to the enforcement of requirements imposed on the holder of a licence under Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 ([S.I. 1992/231 \(N.I. 1\)](#)).

## 23 Limits on costs to be incurred

- (1) Regulations may make provision for—
  - (a) the power to give a notification under section 12 not to be exercisable if a maximum cost incurred or to be incurred by a CFD counterparty has been reached (such cost to be calculated in accordance with provision made by or under the regulations);
  - (b) a power for the Secretary of State to direct the national system operator not to give a notification under that section if the Secretary of State believes that by virtue of the notification being given a cost greater than the maximum cost provided for by the regulations would be incurred.
- (2) If more than one designation has effect under section 7, the reference in subsection (1)(a) is a reference to all CFD counterparties.
- (3) Provision made by virtue of subsection (1)(a) may provide for anything which is to be calculated under the regulations to be calculated by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.

## 24 Consultation

- (1) Before making regulations under this Chapter the Secretary of State must consult—
  - (a) the Scottish Ministers,
  - (b) the Welsh Ministers,
  - (c) the Department of Enterprise, Trade and Investment,
  - (d) any person who is a holder of a licence to supply electricity under section 6(1)(d) of EA 1989,
  - (e) any person who is a holder of a licence under Article 10(1)(b) or (c) of the Electricity (Northern Ireland) Order 1992 ([S.I. 1992/231 \(N.I. 1\)](#)) (transmission or supply licence),
  - (f) the Authority,
  - (g) the national system operator, and
  - (h) such other persons as the Secretary of State considers it appropriate to consult.

- (2) Before publishing standard terms under section 11 the Secretary of State must consult such persons as the Secretary of State considers it appropriate to consult.
- (3) A requirement under this section to consult may be satisfied by consultation before, as well as consultation after, the passing of this Act.

## **25 Shadow directors, etc.**

Neither the Secretary of State nor the national system operator is, by virtue of the exercise of a power conferred by or by virtue of this Chapter, to be regarded as—

- (a) a person occupying in relation to a CFD counterparty the position of director;
- (b) being a person in accordance with whose directions or instructions the directors of a CFD counterparty are accustomed to act;
- (c) exercising any function of management in a CFD counterparty;
- (d) a principal of a CFD counterparty.

## **26 Licence modifications**

- (1) The Secretary of State may modify—
  - (a) a condition of a particular licence under section 6(1)(a), (b) or (c) of EA 1989 (generation, transmission and distribution licences);
  - (b) the standard conditions incorporated in licences under that provision by virtue of section 8A(1A) of that Act;
  - (c) a document maintained in accordance with the conditions of licences under that provision, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may make a modification under subsection (1) only for the purpose of—
  - (a) conferring functions on the national system operator in connection with its functions by or by virtue of this Chapter;
  - (b) allowing or requiring services to be provided to a CFD counterparty;
  - (c) enforcing obligations under a CFD.
- (3) Provision included in a licence, or in a document or agreement relating to licences, by virtue of the power under subsection (1) may in particular include provision of a kind that may be included in regulations.
- (4) Before making a modification under this section, the Secretary of State must consult—
  - (a) the Scottish Ministers,
  - (b) the Welsh Ministers,
  - (c) the holder of any licence being modified,
  - (d) any person who is a holder of a licence to supply electricity under section 6(1)(d) of EA 1989,
  - (e) any person who is a holder of a licence to supply electricity under Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)),
  - (f) the Department of Enterprise, Trade and Investment,
  - (g) the Authority, and
  - (h) such other persons as the Secretary of State considers it appropriate to consult.

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- (5) Subsection (4) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

### CHAPTER 3

#### CAPACITY MARKET

#### 27 Power to make electricity capacity regulations

- (1) The Secretary of State may by regulations make provision for the purpose of providing capacity to meet the demands of consumers for the supply of electricity in Great Britain.
- (2) Regulations under this section are referred to in this Chapter as “electricity capacity regulations”.
- (3) In subsection (1) “providing capacity” means providing electricity or reducing demand for electricity; and electricity capacity regulations may make further provision about the meaning of “providing electricity” or “reducing demand for electricity”.
- (4) The provision which may be made about the meaning of “reducing demand for electricity” includes provision that reducing the consumption of electricity reduces demand for electricity.
- (5) The provision that may be made in electricity capacity regulations includes, but is not limited to, the provision described in this Chapter.
- (6) In this Chapter “national system operator” means the person operating the national transmission system for Great Britain (and for this purpose “transmission system” has the same meaning as in EA 1989 - see section 4(4) of that Act).

#### 28 Capacity agreements

- (1) Electricity capacity regulations may make provision about capacity agreements.
- (2) Subject to any further provision made under this Chapter, a capacity agreement is an instrument by virtue of which—
  - (a) the holder of the capacity agreement (“the capacity provider”) may be required to provide capacity;
  - (b) all electricity suppliers may be required to make payments (“capacity payments”) for the benefit of capacity providers;
  - (c) capacity providers may be required to make payments (“capacity incentives”) for the benefit of all electricity suppliers.
- (3) Provision included in electricity capacity regulations for the purposes of subsection (2) may make provision about the meaning of “electricity supplier”.
- (4) Provision included in electricity capacity regulations by virtue of subsection (1) may include provision about—
  - (a) the terms of a capacity agreement;
  - (b) the circumstances in which, and the process by which, a capacity agreement may or must be issued;

- (c) the persons who may be capacity providers;
  - (d) the circumstances in which capacity must be available;
  - (e) the duration of a capacity agreement;
  - (f) the means by which capacity payments or capacity incentives are to be calculated;
  - (g) a person or body who is to administer the settlement of capacity payments or capacity incentives (“a settlement body”);
  - (h) the enforcement of the terms of a capacity agreement;
  - (i) the resolution of disputes relating to a capacity agreement;
  - (j) the circumstances in which a capacity agreement may be terminated or varied;
  - (k) the circumstances in which a capacity agreement may be assigned or traded.
- (5) Provision falling within subsection (4) includes provision—
- (a) conferring on the national system operator the function of issuing capacity agreements;
  - (b) relating to the outcome of a capacity auction (see section 29);
  - (c) about any conditions that must be satisfied by or in relation to a person before that person may enter a capacity auction or become a capacity provider;
  - (d) about any matters in relation to which a person must satisfy the national system operator before the person may enter a capacity auction or become a capacity provider.
- (6) Provision made by virtue of subsection (4)(f) and (g) may—
- (a) include provision for a settlement body to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed as capacity payments or capacity incentives;
  - (b) provide for anything which is to be calculated or determined under the regulations to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.
- (7) Provision made by virtue of this section may include provision requiring a person to consent to the inspection of plant or premises, either before or after that person becomes a capacity provider.

## **29 Capacity auctions**

- (1) Electricity capacity regulations may make provision for the determination on a competitive basis of who may be a capacity provider (referred to in this Chapter as a “capacity auction”).
- (2) Provision included in electricity capacity regulations by virtue of subsection (1) may include provision—
- (a) for the national system operator to run a capacity auction;
  - (b) about the circumstances in which a capacity auction may or must be held;
  - (c) about the amount of capacity in relation to which a determination may be made;
  - (d) about the intervals at which a capacity auction may or must be held;
  - (e) about the process by which a capacity auction may or must be run;

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- (f) about the manner in which the Secretary of State may decide whether and how to exercise any function in relation to capacity auctions;
  - (g) about appeals relating to eligibility for, or the outcome of, capacity auctions.
- (3) Provision falling within subsection (2)(a) may include provision—
- (a) requiring the national system operator to prepare and publish rules or guidance about capacity auctions;
  - (b) about any process to be followed in preparing and publishing any such rules or guidance.
- (4) Provision falling within subsection (2)(c) may confer on the Secretary of State or the Authority (but not on any other person) the function of deciding the amount of capacity in relation to which a determination may be made.
- (5) Provision falling within subsection (2)(f) may include provision about—
- (a) the frequency with which a decision will be made and reviewed;
  - (b) the persons who will be consulted before a decision is made;
  - (c) the matters to be taken into account in reaching a decision.

### **30 Settlement body**

- (1) Electricity capacity regulations may make provision for payments to be made by electricity suppliers or capacity providers to a settlement body (see section 28(4)(g)) for the purpose of enabling the body—
- (a) to meet such descriptions of its costs as the Secretary of State considers appropriate;
  - (b) to hold sums in reserve;
  - (c) to cover losses in the case of insolvency or default of an electricity supplier or capacity provider.
- (2) In subsection (1)(a) “costs” means costs in connection with the performance of any function conferred by or by virtue of this Chapter.
- (3) Electricity capacity regulations may make provision to require electricity suppliers or capacity providers to provide financial collateral to a settlement body (whether in cash, securities or any other form).
- (4) Provision made by virtue of this section may include provision for—
- (a) a settlement body to determine the form and terms of any financial collateral;
  - (b) a settlement body to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed by an electricity supplier or capacity provider or are to be provided as financial collateral by an electricity supplier or capacity provider;
  - (c) the issuing of notices by a settlement body to require the payment or provision of such amounts.
- (5) Provision made by virtue of subsection (4)(b) may provide for anything which is to be calculated or determined under the regulations to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.



### **31 Functions of the Authority or the national system operator**

Electricity capacity regulations may make provision to confer functions on the Authority or the national system operator.

### **32 Other requirements**

- (1) Electricity capacity regulations may impose requirements otherwise than under a capacity agreement.
- (2) The persons on whom requirements may be imposed by virtue of subsection (1) include—
  - (a) any person who is a holder of a licence under section 6(1) of EA 1989;
  - (b) any other person carrying out functions in relation to capacity agreements;
  - (c) any other person who is, or has ceased to be, a capacity provider.
- (3) Requirements which may be imposed by virtue of subsection (1) include requirements—
  - (a) relating to the manner in which functions are to be exercised;
  - (b) relating to restrictions on the use of generating plant;
  - (c) relating to participation in a capacity auction;
  - (d) relating to the inspection of plant or property.

### **33 Electricity capacity regulations: information and advice**

- (1) Electricity capacity regulations may make provision about the provision and publication of information.
- (2) Provision included in electricity capacity regulations by virtue of subsection (1) may include provision—
  - (a) for the Secretary of State to require the Authority, the national system operator or any other person specified in the regulations to provide information or advice to the Secretary of State or any other person so specified;
  - (b) for the Authority or the national system operator to require information to be provided to it by any person specified in the regulations for any purpose so specified;
  - (c) for the Secretary of State to require capacity providers and electricity suppliers to share information about the operation of capacity agreements with each other or with any other person so specified;
  - (d) for the publication by any person so specified of any information or advice so specified;
  - (e) for the classification and protection of confidential or sensitive information.
- (3) The prohibition on disclosure of information by section 105(1) of the Utilities Act 2000 does not apply to a disclosure required by virtue of this section.

### **34 Power to make capacity market rules**

- (1) The Secretary of State may make capacity market rules which, subject to subsection (2), may contain any provision that may be made by electricity capacity regulations.

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- (2) Capacity market rules may not make—
  - (a) provision falling within—
    - (i) section 27(3);
    - (ii) section 28(3);
    - (iii) paragraphs (f) or (g) of section 28(4);
    - (iv) section 28(5)(a);
    - (v) paragraphs (b), (c), (d) or (f) of section 29(2);
    - (vi) section 30;
    - (vii) section 35;
  - (b) provision for the Secretary of State to require a person to provide information or advice to the Secretary of State.
- (3) Electricity capacity regulations may make provision to confer on the Authority, to such extent and subject to such conditions as may be specified in the regulations, the power to make capacity market rules.
- (4) The conditions may in particular include conditions about consultation; and provision made by virtue of subsection (3) must provide that, before any exercise of the power to make capacity market rules, the Authority must consult—
  - (a) any person who is a holder of a licence to supply electricity under section 6(1) (d) of EA 1989;
  - (b) any person who is a capacity provider.
- (5) Provision made by virtue of subsection (3) must secure that capacity market rules made by the Authority may not confer functions on the Authority except with the consent of the Secretary of State.
- (6) Provision made by virtue of subsection (3) may include provision—
  - (a) for the reference to the Secretary of State in section 33(2)(c) to have effect, for the purposes of capacity market rules and to such extent as may be specified in the regulations, as a reference to the Authority;
  - (b) for section 33(3) to apply in relation to a disclosure required by virtue of the capacity market rules.

### **35 Provision about electricity demand reduction**

- (1) This section applies where provision made by electricity capacity regulations relates to the provision of capacity by reducing demand for electricity.
- (2) Where this section applies, the Secretary of State may, instead of conferring functions on the national system operator, confer functions on such other person or body as the Secretary of State considers appropriate.
- (3) For the purposes of provision made by virtue of subsection (2), the references to the national system operator in—
  - (a) section 28(5)(a) and (d);
  - (b) section 29(2)(a) and (3)(a);
  - (c) section 31;
  - (d) section 33(2)(a) and (b);
  - (e) section 37,

are to be read as if they included a reference to a person or body on whom a function is conferred by virtue of this section.

### **36 Enforcement and dispute resolution**

- (1) Electricity capacity regulations may make provision about the enforcement of any obligation or requirement imposed by the regulations or by capacity market rules.
- (2) Capacity market rules may make provision about the enforcement of any obligation or requirement imposed by the rules.
- (3) Provision in electricity capacity regulations or in capacity market rules about enforcement or the resolution of disputes may include provision conferring functions on any public body or any other person.
- (4) Provision made by virtue of this section may include provision—
  - (a) about powers to impose financial penalties;
  - (b) for requirements under the electricity capacity regulations or under capacity market rules to be enforceable by the Authority as if they were relevant requirements on a regulated person for the purposes of section 25 of EA 1989;
  - (c) about reference to arbitration;
  - (d) about appeals.

### **37 Licence modifications for the purpose of the capacity market**

- (1) The Secretary of State may, for any purpose related to provision that is made by this Chapter, or any purpose for which provision may be made under this Chapter, modify—
  - (a) a condition of a particular licence under section 6(1)(a) to (e) of EA 1989 (generation, transmission, distribution, supply and interconnector licences);
  - (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;
  - (c) a document maintained in accordance with the conditions of licences under those provisions, or an agreement that gives effect to a document so maintained.
- (2) A modification under this section may in particular include a modification—
  - (a) to provide for a new document to be prepared and maintained in accordance with the conditions of a licence;
  - (b) to provide for an agreement to give effect to a document so maintained;
  - (c) to confer functions on the national system operator.
- (3) Provision included in a licence, or in a document or agreement relating to licences, by virtue of the modification power may in particular include provision of any kind that may be included in electricity capacity regulations.
- (4) Before making a modification under this section, the Secretary of State must consult—
  - (a) the holder of any licence being modified,
  - (b) the Authority, and
  - (c) such other persons as the Secretary of State considers it appropriate to consult.

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- (5) Subsection (4) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

### **38 Amendment of enactments**

The Secretary of State may by regulations, for the purpose of or in connection with any provision made by or by virtue of this Chapter—

- (a) amend or repeal section 47ZA of EA 1989 (annual report by Authority on security of electricity supply);
- (b) amend section 172 of the Energy Act 2004 (annual report on security of energy supplies);
- (c) amend section 25 of and Schedule 6A to EA 1989 (enforcement of obligations of regulated persons);
- (d) make such provision amending, repealing or revoking any other enactment as the Secretary of State considers appropriate in consequence of provision made by or by virtue of this Chapter.

### **39 Principal objective and general duties**

Sections 3A to 3D of EA 1989 (principal objective and general duties) apply in relation to functions of the Authority conferred by or by virtue of this Chapter as they apply in relation to functions under Part 1 of that Act.

### **40 Regulations under Chapter 3**

- (1) Regulations under this Chapter may—
  - (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (2) Before making any regulations under this Chapter, the Secretary of State must consult—
  - (a) the Authority,
  - (b) any person who is a holder of a licence to supply electricity under section 6(1)(d) of EA 1989,
  - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (3) Subsection (2) may be satisfied by consultation before, as well as consultation after, the passing of this Act.
- (4) Regulations under this Chapter must be made by statutory instrument.
- (5) Subject to subsection (6), an instrument containing (whether alone or with other provision) regulations under this Chapter may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (6) An instrument containing only regulations within subsection (7) is subject to annulment in pursuance of a resolution of either House of Parliament.

- (7) The regulations within this subsection are—
- (a) electricity capacity regulations which—
    - (i) only make provision within section 33, and
    - (ii) are not the first set of electricity capacity regulations to make such provision;
  - (b) regulations under section 38 which do not make provision amending or repealing a provision of an enactment contained in primary legislation.
- (8) If, but for this subsection, an instrument containing electricity capacity regulations would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

#### **41 Capacity market rules: procedure**

- (1) Before the first exercise by the Secretary of State of the power to make capacity market rules, the Secretary of State must lay a draft of the rules before Parliament.
- (2) If, within the 40-day period, either House of Parliament resolves not to approve the draft, the Secretary of State may not take any further steps in relation to the proposed rules.
- (3) If no such resolution is made within that period, the Secretary of State may make the rules in the form of the draft.
- (4) Subsection (3) does not prevent a new draft of proposed capacity market rules being laid before Parliament.
- (5) In this section “40-day period”, in relation to a draft of proposed capacity market rules, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).
- (6) For the purposes of calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (7) Before any exercise by the Secretary of State of a power to make capacity market rules, the Secretary of State must consult—
- (a) the Authority;
  - (b) any person who is a holder of a licence to supply electricity under section 6(1)(d) of EA 1989;
  - (c) any person who is a capacity provider;
  - (d) such other persons as the Secretary of State considers it appropriate to consult.
- (8) Subsection (7) may be satisfied by consultation before, as well as consultation after, the passing of this Act.
- (9) In relation to any exercise by the Secretary of State or the Authority of a power to make capacity market rules, the person making the rules must, as soon as reasonably practicable after they are made, lay them before Parliament and publish them.

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## **42 Capacity market rules: further provision**

- (1) Capacity market rules may—
  - (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (2) A power to make capacity market rules includes a power to amend, add to or remove capacity market rules (and a person exercising such a power may amend, add to or remove provision in capacity market rules made by another person).
- (3) But subsection (2) is subject to provision made by electricity capacity regulations.

## **43 Pilot scheme for electricity demand reduction**

- (1) There may be paid out of money provided by Parliament expenditure incurred by the Secretary of State in connection with arrangements made—
  - (a) for the purpose of reducing demand for electricity, and
  - (b) wholly or partly for the purpose of determining provision to be included in electricity capacity regulations;and such arrangements are referred to in this section as “a pilot scheme”.
- (2) The Secretary of State must review the operation and effectiveness of any pilot scheme.
- (3) The Secretary of State must set out the results and conclusions of the review in a report to Parliament—
  - (a) by laying a copy of the report before each House of Parliament, or
  - (b) if the Secretary of State determines that the report should be made orally, by making a statement to the House of Parliament of which that Secretary of State is a member.
- (4) A report under subsection (3) must be made as soon as reasonably practicable after the conclusion of the pilot scheme to which the report relates.

# **CHAPTER 4**

## **INVESTMENT CONTRACTS**

## **44 Investment contracts**

Schedule 2 (which makes provision about investment contracts) has effect.

## CHAPTER 5

### CONFLICT OF INTEREST AND CONTINGENCY ARRANGEMENTS

#### 45 Modifications of transmission and other licences: business separation

- (1) The Secretary of State may modify—
  - (a) a condition of a particular licence under section 6(1)(a) to (e) of EA 1989 (generation, transmission, distribution, supply and interconnector licences);
  - (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;
  - (c) a document maintained in accordance with the conditions of licences under section 6(1)(a) to (e) of that Act, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may make a modification under subsection (1) only for the purpose of imposing measures for or in connection with securing an appropriate degree of business separation between the carrying on of—
  - (a) system operation functions (or any particular such function), and
  - (b) any other functions (including, in a case where a measure relates to a particular system operation function, other system operation functions).
- (3) “System operation functions” are—
  - (a) functions authorised under a transmission licence of co-ordinating and directing the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place, and
  - (b) EMR functions.
- (4) A degree of business separation is “appropriate” for the purposes of subsection (2) if the Secretary of State determines it to be necessary or desirable as a consequence of the conferral of EMR functions.
- (5) In making that determination, the Secretary of State must have regard to the extent to which a measure of the kind mentioned in subsection (2) may affect the efficient and effective carrying on of system operation functions and other functions authorised under a transmission licence.
- (6) The measures referred to in subsection (2) include, in particular, measures for or in connection with securing any of the following—
  - (a) the body corporate that carries on EMR functions does not carry on other functions;
  - (b) limitations are in place in respect of the control or influence that may be exercised over that body by another group undertaking (within the meaning of the Companies Acts - see section 1161 of the Companies Act 2006);
  - (c) separations are in place between—
    - (i) the locations where system operation functions, and other functions, are carried on;
    - (ii) the information technology systems used for the purposes of the carrying on of system operation functions and other functions;
  - (d) the accounting arrangements in relation to system operation functions are separate from those in relation to other functions;

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- (e) persons who participate in the carrying on of system operation functions do not participate in the carrying on of other functions;
  - (f) persons with access to information obtained in the carrying on of system operation functions do not have access to information obtained in the carrying on of other functions.
- (7) The power conferred by subsection (1) may be exercised so as to impose a requirement on a person holding a transmission licence—
- (a) to prepare annual reports about how measures within subsection (2) have been put in place for the year in question, and
  - (b) to submit such reports to either or both of the Secretary of State and the Authority.
- (8) Before making a modification under subsection (1), the Secretary of State must consult—
- (a) the holder of any licence being modified,
  - (b) the Authority, and
  - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (9) Subsection (8) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (10) In this section—
- “EMR functions” means functions conferred by or by virtue of Chapter 2 (contracts for difference), Chapter 3 (capacity market) or Chapter 4 (investment contracts);
  - “transmission”, “transmission licence” and “transmission system” have the same meaning as in Part 1 of EA 1989.

#### **46 Power to transfer EMR functions**

- (1) The Secretary of State may by order provide that EMR functions carried out by the national system operator are instead to be carried out by an alternative delivery body.
- (2) An order under subsection (1) may be made only if—
- (a) the national system operator has requested the making of the order,
  - (b) an energy administration order is in force in relation to the national system operator,
  - (c) the unsatisfactory performance condition is met (see subsection (3)),
  - (d) it appears to the Secretary of State necessary or desirable to make the order as a result of a change, occurring after the coming into force of this section, in the persons having control of the national system operator (see subsection (4)), or
  - (e) it otherwise appears to the Secretary of State necessary or desirable to make the order in connection with furthering the purposes of—
    - (i) encouraging low carbon electricity generation (within the meaning of Chapter 2), or
    - (ii) providing capacity to meet the demands of consumers for the supply of electricity in Great Britain.
- (3) The unsatisfactory performance condition is met if—
- (a) it appears to the Secretary of State that the national system operator has been failing to carry out its EMR functions in an efficient and effective manner,



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- (b) the Secretary of State has given notice in writing to the national system operator providing particulars of the failure,
  - (c) a period of at least 6 months has passed since the giving of the notice, and
  - (d) it appears to the Secretary of State that the failure so specified is continuing.
- (4) “Control”, in relation to the national system operator, means the power of a person to secure—
  - (a) by means of the holding of shares or the possession of voting power in relation to the national system operator or any other body corporate, or
  - (b) as a result of any powers conferred by the articles of association or other document regulating the national system operator or any other body corporate, that the affairs of the national system operator are conducted in accordance with the person’s wishes.
- (5) The Secretary of State must, subject to subsection (6), consult the national system operator before making an order under subsection (1) on the grounds mentioned in subsection (2)(e).
- (6) Subsection (5) does not apply where the Secretary of State considers the urgency of the case makes it inexpedient to consult the national system operator before making the order.
- (7) Where an EMR function has previously been transferred from the national system operator to an alternative delivery body by an order under subsection (1), the Secretary of State may by a further order provide that the function is instead to be carried out by—
  - (a) a different alternative delivery body, or
  - (b) the national system operator.
- (8) “Alternative delivery body”, in relation to an order under subsection (1) or (7), means such person as may be specified in the order.
- (9) An order under subsection (1) or (7) that specifies as the alternative delivery body a person other than the Secretary of State requires the consent of that person.
- (10) An order under subsection (7) providing for EMR functions to be carried out by the national system operator requires the consent of the national system operator.
- (11) In this section—
  - “EMR functions” means functions conferred on the national system operator by or by virtue of Chapter 2 (contracts for difference), Chapter 3 (capacity market) or Chapter 4 (investment contracts);
  - “energy administration order” has the same meaning as in Chapter 3 of Part 3 of the Energy Act 2004 (see section 154(1) of that Act);
  - “national system operator” means the person operating the national transmission system for Great Britain (and for this purpose “transmission system” has the same meaning as in EA 1989 - see section 4(4) of that Act).

#### **47 Orders under section 46: fees and other supplementary provision**

- (1) A transfer of functions order may provide for an alternative delivery body to require fees to be paid for, or in connection with, the performance of any EMR functions conferred on the body by virtue of the order.

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- (2) The amount of any such fee is the amount specified in, or determined by or in accordance with, the order.
- (3) A transfer of functions order may relate—
  - (a) to all EMR functions that the national system operator or the alternative delivery body is carrying out, or
  - (b) only to such of those functions as are specified in the order.
- (4) A transfer of functions order may—
  - (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision and savings;
  - (c) make different provision for different cases or circumstances or for different purposes.
- (5) Consequential provision made under subsection (4)(a) may amend, repeal or revoke any provision made by or under an Act, whenever passed or made (including this Act).
- (6) A transfer of functions order is to be made by statutory instrument.
- (7) A statutory instrument containing a transfer of functions order is subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) Schedule 3 (which confers power on the Secretary of State to make transfer schemes in connection with the making of transfer of functions orders) has effect.
- (9) If the Secretary of State makes a transfer of functions order under which any EMR functions of the national system operator are transferred to an alternative delivery body, the Secretary of State must consider the extent to which (if at all) a licence modification power should be exercised as a consequence of the national system operator ceasing to carry out the functions that are transferred.
- (10) In subsection (9) “licence modification power” means a power conferred by section 26, 37 or 45 to modify—
  - (a) a condition of a transmission licence granted to the national system operator under section 6(1)(b) of EA 1989,
  - (b) the standard conditions incorporated in such licences under section 8A of that Act, or
  - (c) a document maintained in accordance with the conditions of such licences, or an agreement that gives effect to a document so maintained.
- (11) In this section—
 

“alternative delivery body”, “EMR functions” and “national system operator” have the same meaning as in section 46;

“transfer of functions order” means an order under section 46(1) or (7).

#### **48 Energy administration orders**

- (1) The Energy Act 2004 is amended as follows.
- (2) In section 154 (energy administration orders), in subsection (3) for “section 155” substitute “—
  - (a) section 155(1), and

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- (b) section 155(9) (if and to the extent that section 155(9) applies in relation to the company).”
- (3) In section 155 (objective of an energy administration), after subsection (7) insert—
  - “(8) Subsection (9) applies if the company in relation to which an energy administration order is made has functions conferred by or by virtue of—
    - (a) Chapter 2, 3 or 4 of Part 2 of the Energy Act 2013, or
    - (b) an order made under section 46 of that Act (power of Secretary of State to transfer certain functions).
  - (9) The objective of an energy administration (in addition to the objective mentioned in subsection (1)) is to secure—
    - (a) that those functions are and continue to be carried out in an efficient and effective manner; and
    - (b) that it becomes unnecessary, by one or both of the means mentioned in subsection (2), for the energy administration order to remain in force for that purpose.
  - (10) The duty under section 154(3), so far as it relates to the objective mentioned in subsection (9)—
    - (a) applies only to the extent that securing that objective is not inconsistent with securing the objective mentioned in subsection (1);
    - (b) ceases to apply in respect of any function of a company if an order is made under section 46 of the Energy Act 2013 as a result of which the function is transferred from that company to another person.”

## CHAPTER 6

### ACCESS TO MARKETS ETC

#### *Market participation and liquidity*

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

- (1) The Secretary of State may modify—
  - (a) a condition of a particular licence under section 6(1)(a) or (d) of EA 1989 (generation and supply licences);
  - (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;
  - (c) a document maintained in accordance with the conditions of licences under section 6(1)(a) or (d) of that Act, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may exercise the power in subsection (1) only for the following purposes—
  - (a) facilitating participation in the wholesale electricity market in Great Britain, whether by licence holders or others;
  - (b) promoting liquidity in that market.
- (3) Modifications made by virtue of that power may include—

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- (a) provision imposing obligations in relation to the sale or purchase of electricity, including, in particular, obligations as to—
    - (i) the terms on which electricity is sold or purchased, and
    - (ii) the circumstances or manner in which electricity is sold or purchased;
  - (b) provision imposing restrictions on the sale or purchase of electricity to or from group undertakings;
  - (c) provision imposing obligations in relation to the disclosure or publication of information.
- (4) For the purposes of subsection (3)(b), electricity is sold to or purchased from a group undertaking if the transaction is between undertakings one of which is a group undertaking in relation to the other.

For this purpose, “undertaking” and “group undertaking” have the same meanings as in the Companies Acts (see section 1161 of the Companies Act 2006).

*Power purchase agreement scheme*

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

- (1) The Secretary of State may modify—
- (a) a condition of a particular licence under section 6(1)(d) of EA 1989 (supply licences);
  - (b) the standard conditions incorporated in licences under that provision by virtue of section 8A of that Act;
  - (c) a document maintained in accordance with the conditions of licences under section 6(1)(d) of that Act, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may exercise the power in subsection (1) only for the purpose of facilitating investment in electricity generation by means of a power purchase agreement scheme.
- (3) For the purposes of this section and section 51—
- (a) a power purchase agreement scheme is a scheme established by supply licence conditions and regulations under section 51 for promoting the availability to electricity generators of power purchase agreements, and
  - (b) “power purchase agreement” means an arrangement under which a licensed supplier agrees to purchase electricity generated by an electricity generator at a discount to a prevailing market price.

For this purpose, “supply licence condition” means any condition, document or agreement of a kind mentioned in subsection (1).

- (4) Provision that may be made under subsection (1) in relation to a power purchase agreement scheme includes provision—
- (a) as to the eligibility of an electricity generator to enter into a power purchase agreement under the scheme;
  - (b) as to the terms of any power purchase agreement to be entered into under the scheme, including provision—

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- (i) for determining the price at which electricity is to be purchased under the agreement (including provision for determining a market price and the amount of a discount at any time);
    - (ii) as to the duration of any such agreement;
  - (c) as to the circumstances in which a licensed supplier is or may be required or permitted to enter, or offer to enter, into a power purchase agreement under the scheme;
  - (d) for the provision of information in connection with the scheme.
- (5) Provision within subsection (4)(c) includes provision for determining which licensed supplier or suppliers is or are to be required or permitted to enter, or offer to enter, into a power purchase agreement with an electricity generator in any particular case.
- (6) Such provision may in particular include provision for the licensed supplier or suppliers in question to be determined—
- (a) by a process involving a determination or determinations by one or more of the following—
    - (i) the Secretary of State;
    - (ii) the Authority;
    - (iii) the electricity generator;
  - (b) by auction or other competitive process;
- and provision that may be made by virtue of paragraph (b) includes provision as to the circumstances in which a licensed supplier is or may be required or permitted to participate in an auction or other process.
- (7) For the purposes of this section and section 51, “licensed supplier” means the holder of a licence under section 6(1)(d) of EA 1989.

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

- (1) The Secretary of State may by regulations make provision, in connection with any modifications made under section 50, for or in connection with a power purchase agreement scheme.
- (2) Any such regulations may in particular—
- (a) make provision for apportioning amongst licensed suppliers, or any of them, all or any part of the value of any or all of the costs or benefits of any licensed supplier in connection with the scheme;
  - (b) confer functions on the Secretary of State or the Authority (which may include provision for directions to be given to the Authority by the Secretary of State);
  - (c) make provision for the delegation of functions conferred on the Secretary of State or the Authority by the regulations or by virtue of section 50;
  - (d) include provision for obligations imposed by the regulations on licensed suppliers to be enforceable by the Authority as if they were relevant requirements on a regulated person for the purposes of section 25 of EA 1989;
  - (e) make provision about the provision of information in connection with the scheme.
- (3) Provision that may be included in regulations under this section by virtue of subsection (2)(a) includes, in particular, provision—
- (a) for requiring licensed suppliers to pay a levy to the Authority at specified times;

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- (b) specifying how such a levy is to be calculated;
  - (c) conferring an entitlement on a licensed supplier to receive a payment from the Authority.
- (4) Provision which may be included in regulations by virtue of subsection (3) includes 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 and its value.
- (5) Regulations under this section may—
- (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (6) Before making any regulations under this section, the Secretary of State must consult—
- (a) licensed suppliers,
  - (b) the Authority, and
  - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (7) Subsection (6) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (8) Regulations under this section must be made by statutory instrument.
- (9) An instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

## **52 Power purchase agreement scheme: disclosure of information**

In section 105 of the Utilities Act 2000 (general restrictions on disclosure of information)—

- (a) in subsection (1)(a), after “2010” insert “or section 50 or 51 of the Energy Act 2013”;
- (b) in subsection (3)(a), after “2010” insert “, section 50 or 51 of the Energy Act 2013”.

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

Sections 3A to 3D of EA 1989 (principal objective and general duties) apply in relation to functions of the Secretary of State or the Authority conferred by or by virtue of section 50 or 51, or section 54 so far as it relates to a power purchase agreement scheme, as they apply in relation to functions under Part 1 of that Act.

### *Supplementary*

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

- (1) A modification of a licence under section 49(1) or 50(1) may in particular include a modification—

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- (a) to provide for a new document to be required to be prepared and maintained in accordance with the conditions of such a licence;
  - (b) to provide for an agreement to give effect to a document so maintained.
- (2) Before making modifications under section 49(1) or 50(1), the Secretary of State must consult—
- (a) the holder of any licence being modified,
  - (b) the Authority, and
  - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (3) Subsection (2) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

## CHAPTER 7

### THE RENEWABLES OBLIGATION: TRANSITIONAL ARRANGEMENTS

#### 55 Closure of support under the renewables obligation

- (1) After section 32L of EA 1989 insert—

##### “32LA Renewables obligation closure order

- (1) The Secretary of State may make a renewables obligation closure order.
- (2) A renewables obligation closure order is an order which provides that no renewables obligation certificates are to be issued under a renewables obligation order in respect of electricity generated after a specified date.
- (3) Provision made under subsection (2) may specify different dates in relation to different cases or circumstances.
- (4) The cases or circumstances mentioned in subsection (2) may in particular be described by reference to—
  - (a) accreditation of a generating station, or
  - (b) the addition of generating capacity to a generating station.
- (5) A renewables obligation closure order may include provision about—
  - (a) the meaning of “accreditation” and “generating capacity” in subsection (4);
  - (b) when generating capacity is to be treated as added to a generating station for the purposes of that subsection.
- (6) References in this section to a renewables obligation order are references to any renewables obligation order made under section 32 (whenever made, and whether or not made by the Secretary of State).
- (7) Power to make provision in a renewables obligation order (and any provision contained in such an order) is subject to provision contained in a renewables obligation closure order; but this section is not otherwise to be taken as affecting power to make provision in a renewables obligation order of the kind mentioned in subsection (2).

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- (8) Section 32K applies in relation to a renewables obligation closure order as it applies in relation to a renewables obligation order (and subsection (3) above is not to be taken as limiting the application of that section).

### **32LB Renewables obligation closure orders: procedure**

- (1) Before making a renewables obligation closure order, the Secretary of State must consult—
- (a) the Authority,
  - (b) the Council,
  - (c) such generators of electricity from renewable sources as the Secretary of State considers appropriate, and
  - (d) such other persons, if any, as the Secretary of State considers appropriate.
- (2) The requirement to consult may be satisfied by consultation before, as well as consultation after, the passing of the Energy Act 2013.
- (3) A renewables obligation closure order is not to be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.”
- (2) In section 32M(1) of EA 1989 (interpretation of sections 32 to 32M)—
- (a) for “32L” substitute “32LB”;
  - (b) after the definition of “renewables obligation order” insert—  
“renewables obligation closure order” is to be construed in accordance with section 32LA;”;
  - (c) in the definition of “specified”, after “renewables obligation order” insert “or a renewables obligation closure order”.
- (3) In section 106 of EA 1989 (regulations and orders), in subsection (2)(b) after “32,” insert “32LA,”.
- (4) In Article 56(1) of the Energy (Northern Ireland) Order 2003 ([S.I. 2003/419 \(N.I. 6\)](#)) (power to amend Part 7 of that Order to take account of amendments of corresponding Great Britain provisions), the reference to amendments made to sections 32 to 32C of EA 1989 includes a reference to subsections (1) and (2) of this section.

## **56 Transition to certificate purchase scheme**

- (1) EA 1989 is amended as follows.
- (2) After section 32M insert—

### **“32N The certificate purchase obligation**

- (1) The Secretary of State may make a certificate purchase order.
- (2) A certificate purchase order is an order which imposes the certificate purchase obligation on—
- (a) the purchasing body of GB certificates;
  - (b) the purchasing body of NI certificates.



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- (3) The certificate purchase obligation is that—
  - (a) the purchasing body of GB certificates must pay the redemption value of a GB certificate to the person presenting it;
  - (b) the purchasing body of NI certificates must pay the redemption value of a NI certificate to the person presenting it.
- (4) The purchasing body of GB certificates is—
  - (a) the Authority, or
  - (b) such other eligible person as may be designated by the order as the purchasing body of GB certificates.
- (5) The purchasing body of NI certificates is—
  - (a) the Northern Ireland authority, or
  - (b) such other eligible person as may be designated by the order as the purchasing body of NI certificates.
- (6) A person is an “eligible person” for the purposes of designation under subsection (4)(b) if the person is—
  - (a) a CFD counterparty at the time when the designation is made, or
  - (b) the Secretary of State.
- (7) A person is an “eligible person” for the purposes of designation under subsection (5)(b) if the person is a CFD counterparty at the time when the designation is made.
- (8) Subsection (3) is subject to sections 320 to [322](#).

### **320 Further provision about the certificate purchase obligation**

- (1) A certificate purchase order may make provision generally in relation to the certificate purchase obligation.
- (2) A certificate purchase order may, in particular—
  - (a) specify the redemption value of certificates or provide for how the redemption value is to be calculated;
  - (b) provide for different redemption values for successive periods of time;
  - (c) authorise the adjustment of redemption values from time to time for inflation by a method specified in the order (including by reference to a specified scale or index, as it has effect from time to time, or to other specified data of any description);
  - (d) require the relevant purchasing body or the Secretary of State (if not the relevant purchasing body) to publish the redemption value of certificates by a specified deadline;
  - (e) provide for the manner in which a certificate is to be presented to the relevant purchasing body;
  - (f) provide for the certificate purchase obligation in relation to certificates issued in respect of electricity generated—
    - (i) using specified descriptions of renewable sources,
    - (ii) by specified descriptions of generating stations,
    - (iii) in specified ways, or

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- (iv) in other specified cases or circumstances,  
to apply only up to a specified number of the certificates that are presented for payment in any specified period;
  - (g) provide that certificates in respect of electricity generated—
    - (i) using specified descriptions of renewable sources,
    - (ii) by specified descriptions of generating stations,
    - (iii) in specified ways, or
    - (iv) in other specified cases or circumstances,
 are to be issued only up to such number of certificates in any specified period as may be specified or determined in accordance with the order;
  - (h) provide that the certificate purchase obligation is not to apply on presentation of a certificate unless—
    - (i) the certificate is presented by such a deadline as may be specified or determined in accordance with the order, and
    - (ii) any other specified conditions are met (whether in relation to the certificate, the person presenting it or other matters);
  - (i) provide for how the relevant purchasing body is to determine whether specified conditions are met;
  - (j) provide that the certificate purchase obligation in relation to a certificate is to be discharged by such a deadline as may be specified or determined in accordance with the order;
  - (k) authorise the relevant purchasing body to determine the manner in which payments under the certificate purchase obligation are to be made;
  - (l) authorise the relevant purchasing body to deduct from payments specified descriptions of fees or charges incurred in making the payments;
  - (m) provide for a certificate purchase levy (see section 32P);
  - (n) authorise the Secretary of State to make payments for the purpose of enabling the certificate purchase obligation to be discharged;
  - (o) impose such other obligations, or confer such other functions, on the relevant purchasing body as the Secretary of State considers appropriate.
- (3) Once the redemption value in relation to a certificate is paid (less any deductions permitted under the order by virtue of subsection (2)(1)), the certificate purchase obligation in relation to that certificate is discharged (and the certificate is not to be presented for payment again).
- (4) For the purposes of carrying out its functions under a certificate purchase order, the relevant purchasing body may—
- (a) require a person presenting a certificate to provide such information or documentation as the body may reasonably need for such purposes, and
  - (b) determine the form in which, and the time by which, such information or documentation is to be supplied.

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- (5) The certificate purchase obligation does not apply in relation to a certificate unless the person presenting the certificate has complied with any requirements imposed under subsection (4).

### **32P Certificate purchase levy**

- (1) A certificate purchase order may provide for a certificate purchase levy to be charged in connection with the provision of payments to the relevant purchasing body.
- (2) A certificate purchase levy is a levy—
- (a) charged in respect of supplies of electricity that have been, or are expected to be, made in each specified period, and
  - (b) payable in respect of each such period by persons who make, or are expected to make, the supplies.
- (3) The order may (without limiting the generality of section 32Z(1)(d)) provide for different rates or different amounts of levy to be charged—
- (a) in different cases or circumstances;
  - (b) in relation to different specified periods.
- (4) The order may secure that the levy is not to be charged in respect of particular descriptions of supplies of electricity.
- (5) The order may provide for amounts of the levy received in respect of any period to be applied for the purpose of discharging the certificate purchase obligation in another period.
- (6) The order may, in particular, make provision about any of the following matters—
- (a) what is a supply of electricity for the purposes of the levy;
  - (b) when a supply of electricity is, or is expected to be, made for those purposes;
  - (c) who makes, or is expected to make, a supply of electricity for those purposes;
  - (d) the rates or amounts of the levy, or how such rates or amounts are to be determined;
  - (e) payment of the levy, including deadlines for payment in respect of each period and interest in respect of late payment;
  - (f) administration of the levy;
  - (g) audit of information (whether by the administrator of the levy or a third party) including requirements for audits to be paid by the person whose information is subject to the audit;
  - (h) provision of information, including its provision to third parties in specified circumstances;
  - (i) enforcement of the levy;
  - (j) insolvency of persons liable to pay the levy;
  - (k) reviews and appeals;
  - (l) the functions of the administrator in connection with the levy.

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- (7) The administrator of the levy, in the case of persons who make, or are expected to make, supplies of electricity in Great Britain, is—
  - (a) the Authority, or
  - (b) such other eligible person as may be designated by the order as the administrator in the case of such persons.
- (8) The administrator of the levy, in the case of persons who make, or are expected to make, supplies of electricity in Northern Ireland, is—
  - (a) the Northern Ireland authority, or
  - (b) such other eligible person as may be designated by the order as the administrator in the case of such persons.
- (9) A person is an “eligible person” for the purposes of designation under subsection (7)(b) if the person is—
  - (a) a CFD counterparty at the time when the designation is made, or
  - (b) the Secretary of State.
- (10) A person is an “eligible person” for the purposes of designation under subsection (8)(b) if the person is—
  - (a) a CFD counterparty at the time when the designation is made, or
  - (b) the Northern Ireland department.
- (11) In a case where a person liable to pay the levy has made any overpayment or underpayment (whether arising because an estimate turns out to be wrong or otherwise), provision under subsection (6)(e) may require the amount of the overpayment or underpayment (including interest) to be set off against, or added to, any subsequent liability of the person to pay the levy.
- (12) In a case where the amount received in respect of levy payments for a period falls short of the amount due for that period, provision under subsection (6) (e) or (j) may include a requirement on persons liable to pay the levy to make further payments, by the time and in the circumstances specified, of an amount calculated in the manner specified or determined in accordance with the order.
- (13) Provision under subsection (6)(h) may provide for the administrator to determine the form in which any information that a person is required to give is to be given and the time by which it is to be given.
- (14) Provision under subsection (6)(i) may—
  - (a) if the Authority is the administrator, apply sections 25 to 28 in relation to a requirement in respect of the levy imposed under the order on a person who is not a licence holder as if the person were a licence holder;
  - (b) in any other case, include provision for the imposition of penalties if a requirement in respect of the levy is breached (whether financial or not, but not including the creation of criminal offences).

### **32Q Use of levy payments**

- (1) Amounts payable in respect of the certificate purchase levy are to be paid to the administrator of the levy.
- (2) Amounts received by the administrator under subsection (1) must be paid to—

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- (a) the purchasing body of GB certificates, or
  - (b) the purchasing body of NI certificates,in accordance with such provision as may be contained in the order.
- (3) Amounts paid to a purchasing body under subsection (2) may be used by that body only for the purpose of discharging the certificate purchase obligation.
- (4) The order may contain further provision about—
  - (a) the calculation of amounts received by the administrator that are to be paid to a relevant purchasing body;
  - (b) the time by which the administrator must make payments of such amounts to a relevant purchasing body;
  - (c) the manner in which any such payments are to be made;
  - (d) how amounts are to be dealt with for the purposes of subsection (2) where the administrator and a relevant purchasing body to whom they are to be paid are the same person.
- (5) Subsections (2) to (4) are subject to subsections (6) to (10).
- (6) The order may provide for amounts received by the administrator under subsection (1) to be used by the administrator to make payments—
  - (a) into the Consolidated Fund in respect of costs (or a proportion of costs) which have been or are expected to be incurred—
    - (i) by the Authority,
    - (ii) by the Secretary of State, or
    - (iii) by a relevant designated person,in connection with the performance of functions conferred by or under sections 32N to 32Z2;
  - (b) into the Consolidated Fund of Northern Ireland in respect of costs (or a proportion of costs) which have been or are expected to be incurred—
    - (i) by the Northern Ireland authority, or
    - (ii) by the Northern Ireland department,in connection with the performance of functions conferred by or under sections 32N to 32Z2.
- (7) For the purposes of subsection (6)(a), “relevant designated person” means a person who is designated—
  - (a) as the purchasing body of GB certificates by virtue of being an eligible person within section 32N(6)(a) (CFD counterparty);
  - (b) as the purchasing body of NI certificates by virtue of being an eligible person within section 32N(7) (CFD counterparty);
  - (c) as an administrator of the levy by virtue of being an eligible person within section 32P(9)(a) or (10)(a) (CFD counterparty).
- (8) The order—
  - (a) may exclude amounts of a specified description from being used as mentioned in subsection (6);
  - (b) may prevent the administrator using amounts to make payments in respect of costs of a specified description.

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- (9) The purchasing body of GB certificates must, if directed to do so by the Secretary of State, pay into the Consolidated Fund any amounts received under subsection (2) that it would (but for the direction) be able to use under subsection (3) for the purpose of discharging the purchase obligation in respect of GB certificates.
- (10) The purchasing body of NI certificates must, if directed to do so by the Secretary of State, pay into the Consolidated Fund of Northern Ireland any amounts received under subsection (2) that it would (but for the direction) be able to use under subsection (3) for the purpose of discharging the purchase obligation in respect of NI certificates.
- (11) In this section “the order”, in relation to the certificate purchase levy, means the certificate purchase order that imposes the levy.

### **32R Designation of a CFD counterparty as purchasing body or administrator**

- (1) This section applies in relation to the designation of a person who is a CFD counterparty—
  - (a) as a relevant purchasing body under section 32N(4)(b) or (5)(b), or
  - (b) as the administrator of the levy under section 32P(7)(b) or (8)(b).
- (2) A designation may be made only with the consent of the person designated.
- (3) A designation does not cease to have effect if the person’s designation as a CFD counterparty ceases to have effect by virtue of section 7(6)(a) or (b) of the Energy Act 2013.
- (4) A designation ceases to have effect if—
  - (a) the Secretary of State by order revokes the designation, or
  - (b) the person withdraws consent to the designation by giving not less than 3 months’ notice in writing to the Secretary of State.
- (5) The Secretary of State may by order make transitional provision in connection with a designation ceasing to have effect.
- (6) An order under subsection (5) may in particular make provision about how obligations, imposed by virtue of a certificate purchase order on a person whose designation ceases to have effect, are to be discharged in any period before or after the time when the designation ceases to have effect.
- (7) Subsection (5) is not to be taken as limiting the power to make transitional provision in a certificate purchase order by virtue of section 32Z(1)(b).

### **32S GB certificates**

- (1) A certificate purchase order may (subject to subsection (3)) provide for the Authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate (“a GB certificate”) to—
  - (a) the operator of a generating station, or
  - (b) if the order so provides, a person of any other description specified in the order.

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- (2) A GB certificate is to certify—
  - (a) the matters within subsection (4) or (5), or
  - (b) if the order provides that a certificate may certify the matters within subsection (6), (7), (8) or (9), the matters within that subsection.
- (3) A GB certificate certifying that an amount of electricity has been generated from renewable sources in any period may not be issued if—
  - (a) a renewables obligation order is in force, and
  - (b) a renewables obligation certificate has been, or could be, issued under the order in respect of the generation in that period of the same electricity.
- (4) The matters within this subsection are—
  - (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been supplied by an electricity supplier to customers in Great Britain.
- (5) The matters within this subsection are—
  - (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate,
  - (b) that the generating station in question is not in Northern Ireland, and
  - (c) that the electricity has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (6) The matters within this subsection are—
  - (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been supplied by an electricity supplier to customers in Great Britain.
- (7) The matters within this subsection are—
  - (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate,
  - (b) that none of them is a generating station in Northern Ireland, and
  - (c) that the electricity has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (8) The matters within this subsection are—
  - (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been used in a permitted way.
- (9) The matters within this subsection are—

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- (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been used in a permitted way.
- (10) For the purposes of subsections (8) and (9), electricity generated by a generating station, or generating stations, of any description is used in a permitted way if—
- (a) it is used in one of the ways mentioned in subsection (11), and
  - (b) that way is specified in the order as a permitted way—
    - (i) in relation to all generating stations, or
    - (ii) in relation to generating stations of that description.
- (11) Those ways are—
- (a) being consumed by the operator of the generating station or generating stations by which it was generated;
  - (b) being supplied to customers in Great Britain through a private wire network;
  - (c) being provided to a distribution system or a transmission system in circumstances in which its supply to customers cannot be demonstrated;
  - (d) being used, as respects part, as mentioned in one of paragraphs (a), (b) or (c) and as respects the remainder—
    - (i) as mentioned in one of the other paragraphs, or
    - (ii) as respects part, as mentioned in one of the other paragraphs and, as respects the remainder, as mentioned in the other;
  - (e) being used, as respects part, as mentioned in paragraph (a), (b), (c) or (d) and, as respects the remainder, by being supplied by an electricity supplier to customers in Great Britain or by a Northern Ireland supplier to customers in Northern Ireland, or both.
- (12) Subsection (11) of section 32B (meaning of supply of electricity through a private wire network) applies for the purposes of subsection (11)(b) as it applies for the purposes of subsection (10)(b) of that section.

### **32T NI certificates**

- (1) A certificate purchase order may (subject to subsection (3)) provide for the Northern Ireland authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate (“a NI certificate”) to—
- (a) the operator of a generating station in Northern Ireland, or
  - (b) if the order so provides, a person of any other description.
- (2) A NI certificate is to certify—
- (a) the matters within subsection (4), or
  - (b) if the order provides that a certificate may certify the matters within subsection (5), (6) or (7), the matters within that subsection.
- (3) A NI certificate certifying that an amount of electricity has been generated from renewable sources in any period may not be issued if—



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- (a) an order under Article 52 of the Energy (Northern Ireland) Order 2003 is in force, and
  - (b) a Northern Ireland RO certificate has been, or could be, issued under that order in respect of the same electricity.
- (4) The matters within this subsection are—
  - (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station in Northern Ireland specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that it has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (5) The matters within this subsection are—
  - (a) that two or more generating stations in Northern Ireland have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that it has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (6) The matters within this subsection are—
  - (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station in Northern Ireland specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been used in a permitted way.
- (7) The matters within this subsection are—
  - (a) that two or more generating stations in Northern Ireland have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been used in a permitted way.
- (8) For the purposes of subsections (6) and (7), electricity generated by a generating station, or generating stations, of any description is used in a permitted way if—
  - (a) it is used in one of the ways mentioned in subsection (9), and
  - (b) that way is specified in the order as a permitted way—
    - (i) in relation to all generating stations, or
    - (ii) in relation to generating stations of that description.
- (9) Those ways are—
  - (a) being consumed by the operator of the generating station or generating stations by which it was generated;
  - (b) being supplied to customers in Northern Ireland through a private wire network;
  - (c) being provided to a distribution system located in Northern Ireland, or to transmission system located in Northern Ireland, in circumstances in which its supply to customers in Northern Ireland cannot be demonstrated;

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- (d) being used, as respects part, as mentioned in one of paragraphs (a), (b) or (c) and as respects the remainder—
    - (i) as mentioned in one of the other paragraphs, or
    - (ii) as respects part, as mentioned in one of the other paragraphs and, as respects the remainder, as mentioned in the other;
  - (e) being used, as respects part, as mentioned in paragraph (a), (b), (c) or (d) and, as respects the remainder, by being supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (10) Paragraph (9) of Article 54 of the Energy (Northern Ireland) Order 2003 (meaning of supply of electricity through a private wire network) applies for the purposes of subsection (9)(b) as it applies for the purposes of paragraph (8)(b) of that Article.

### **32U Sections 32S and 32T: supplemental provision**

- (1) A certificate purchase order may provide—
  - (a) that no certificates are to be issued in respect of electricity generated in specified cases or circumstances, or
  - (b) that certificates are to be issued in respect of a proportion only of the electricity generated in specified cases or circumstances.
- (2) In particular, provision made by virtue of subsection (1) may specify—
  - (a) electricity generated using specified descriptions of renewable sources,
  - (b) electricity generated by specified descriptions of generating station, or
  - (c) electricity generated in specified ways.
- (3) Provision made by virtue of subsection (1)(b) may include—
  - (a) provision about how the proportion is to be determined;
  - (b) provision about what, subject to such exceptions as may be specified, constitutes sufficient evidence of any matter required to be established for the purpose of determining that proportion;
  - (c) provision authorising the relevant authority, in specified circumstances, to require an operator of a generating station to arrange—
    - (i) for samples of any fuel used (or to be used) in the generating station, or of any gas or other substance produced as a result of the use of such fuel, to be taken by a person, and analysed in a manner, approved by the relevant authority, and
    - (ii) for the results of that analysis to be made available to the relevant authority.
- (4) In the case of electricity generated by a generating station fuelled or driven—
  - (a) partly by renewable sources, and
  - (b) partly by fossil fuel (other than waste which constitutes a renewable source),
 only the proportion attributable to the renewable sources is to be regarded as generated from such sources.

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- (5) A certificate purchase order may specify—
  - (a) how the proportion referred to in subsection (4) is to be determined, and
  - (b) the consequences for the issuing of certificates if a generating station of the type mentioned in that subsection uses more than a specified proportion of fossil fuel during a specified period.
- (6) Those consequences may include the consequences that no certificates are to be issued in respect of any electricity generated by that generating station during that period.
- (7) A certificate purchase order may provide that ownership of a certificate may be transferred—
  - (a) only to persons of a specified description;
  - (b) only if other specified conditions are met.
- (8) A certificate purchase order may specify circumstances in which the relevant authority may revoke a certificate before the certificate purchase obligation in respect of the certificate is discharged (whether before or after the certificate is presented for payment).
- (9) A certificate purchase order must—
  - (a) prohibit the issue of GB certificates certifying that electricity has been supplied to customers in Northern Ireland by virtue of section 32S(5) or (7) where the Northern Ireland authority has notified the Authority that it is not satisfied that the electricity in question has been supplied to customers in Northern Ireland, and
  - (b) require the revocation of such a certificate if the Northern Ireland authority so notifies the Authority at a time between the issue of the certificate and its presentation for payment for the purposes of the certificate purchase obligation.
- (10) A certificate purchase order may make provision requiring a person to whom a certificate is issued to pay to the relevant authority an amount equal to any amount that has been paid in respect of the certificate under the certificate purchase obligation if it appears to the authority that—
  - (a) the certificate should not have been issued to that person, and
  - (b) it is not possible to secure the recovery of such an amount by refusing to issue another certificate to the person.
- (11) Provision under subsection (10) may include provision about enforcement and appeals.
- (12) The Authority must pay any amounts it receives by virtue of subsection (10) into the Consolidated Fund.
- (13) The Northern Ireland authority must pay any amounts it receives by virtue of subsection (10) into the Consolidated Fund of Northern Ireland.

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### **32V Certificate purchase orders: amounts of electricity stated in certificates**

- (1) A certificate purchase order may specify the amount of electricity to be stated in each certificate, and different amounts may be specified in relation to different cases or circumstances.
- (2) In particular, different amounts may be specified in relation to—
  - (a) electricity generated from different renewable sources;
  - (b) electricity generated by different descriptions of generating station;
  - (c) electricity generated in different ways.
- (3) In this section “banding provision” means provision made in a certificate purchase order by virtue of subsection (1).
- (4) Before making any banding provision, the Secretary of State must have regard to the following matters—
  - (a) the costs (including capital costs) associated with generating electricity from each of the renewable sources or with transmitting or distributing electricity so generated;
  - (b) the income of operators of generating stations in respect of electricity generated from each of those sources or associated with the generation of such electricity;
  - (c) the effect of paragraph 19 of Schedule 6 to the Finance Act 2000 (supplies of electricity from renewable sources exempted from the climate change levy) in relation to electricity generated from each of those sources;
  - (d) the desirability of securing the long term growth, and economic viability, of the industries associated with the generation of electricity from renewable sources;
  - (e) the likely effect of the proposed banding provision on the number of certificate issued by the relevant authority, and the impact this will have on consumers;
  - (f) the potential contribution of electricity generated from each renewable source to the attainment of any target which relates to the generation of electricity or the production of energy and is imposed by, or results from or arises out of, an EU obligation.
- (5) For the purposes of subsection (4)(a), the costs associated with generating electricity from a renewable source include any costs associated with the production or supply of heat produced in connection with that generation.
- (6) For the purposes of subsection (4)(b), an operator’s income associated with the generation of electricity from a renewable source includes any income connected with—
  - (a) the acquisition of the renewable source;
  - (b) the supply of heat produced in connection with the generation;
  - (c) the disposal of any by-product of the generation process.
- (7) After the first order containing banding provision is made by the Secretary of State, no subsequent order containing such provision may be made by the Secretary of State except following a review held by virtue of subsection (8).

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- (8) A certificate purchase order may authorise the Secretary of State to review the whole or any part of the banding provision at any time when the Secretary of State is satisfied that one or more of the specified conditions is satisfied.

### **32W Section 32V: transitional provision and savings**

- (1) This section applies where a certificate purchase order contains banding provision.
- (2) The order may provide for the effect of any banding provision made in an earlier such order to continue, in such circumstances as may be specified, in relation to—
- (a) the electricity generated by generating stations of such descriptions as may be specified, or
  - (b) so much of the electricity as may be determined in accordance with the order.
- (3) The order may provide for—
- (a) the effect of any banding provision made in a renewables obligation order by virtue of section 32D(1) to apply, in such circumstances as may be specified, in relation to GB certificates as it applied in relation to renewables obligation certificates;
  - (b) the effect of any banding provision made in an order under Article 52 of the Energy (Northern Ireland) Order 2003, by virtue of Article 54B(1) of the Order, to apply, in such circumstances as may be specified, in relation to NI certificates as it applied in relation to Northern Ireland RO certificates.
- (4) Section 32V(4) and (7) do not apply in relation to provision of the kind mentioned in subsection (2) or (3) above.
- (5) Subsection (7) applies to a generating station in respect of which a statutory grant has been awarded if—
- (a) the generating station is of a specified description, or
  - (b) the circumstances of the case meet specified requirements.
- (6) The requirements specified under subsection (5)(b) may relate to the time when the grant was awarded (whether a time before or after the coming into force of this section).
- (7) A certificate purchase order which contains banding provision may provide for the operation of that provision in relation to electricity generated by a generating station to which this subsection applies to be conditional upon the operator of the station agreeing—
- (a) if the grant or any part of it has been paid, to repay to the person who made the grant (“the payer”) the whole or a specified part of the grant or part before the repayment date,
  - (b) to pay to the payer interest on an amount repayable under paragraph (a) for such period, and at such rate, as may be determined in accordance with the order (which may confer the function of making the determination on a person), and

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- (c) if the grant or any part of it has not yet been paid, to consent to the cancellation of the award of the grant or part.
- (8) For the purposes of subsection (7)—
- (a) “the repayment date” means the date specified in or determined in accordance with the order, and
  - (b) the period for which interest is payable must not begin before the grant was paid or, if the repayment relates to an instalment of the grant, before the instalment was paid.
- (9) In this section “statutory grant” means—
- (a) a grant awarded under section 5(1) of the Science and Technology Act 1965 (grants to carry on or support scientific research), or
  - (b) any other grant which is payable out of public funds and awarded under or by virtue of an Act or other statutory provision (as defined by section 1(f) of the Interpretation Act (Northern Ireland) 1954).
- (10) This section is without prejudice to section 32Z(1)(b).

### **32X Certificate purchase orders: information**

- (1) A certificate purchase order may provide for—
- (a) the Authority to require a person to provide it with information, or with information of a particular kind, which in the Authority’s opinion is relevant to the question whether a GB certificate is, or was or will in future be, required to be issued to the person;
  - (b) the Northern Ireland authority to require a person to provide it with information, or with information of a particular kind, which in the authority’s opinion is relevant to the question whether a NI certificate is, or was or will in future be, required to be issued to the person.
- (2) That information must be given to the relevant authority in whatever form it requires.
- (3) A certificate purchase order may—
- (a) require operators of generating stations generating electricity (wholly or partly) from biomass to give specified information, or information of a specified kind, to the relevant authority;
  - (b) specify what, for this purpose, constitutes “biomass”;
  - (c) require the information to be given in a specified form and within a specified period;
  - (d) authorise or require the relevant authority to postpone the issue of certificates to the operator of a generating station who fails to comply with a requirement imposed by virtue of paragraph (a) or (c) until such time as the failure is remedied;
  - (e) authorise or require the relevant authority to refuse to issue certificates to such a person or to refuse to issue them unless the failure is remedied within a specified period.
- (4) The relevant authority may publish information obtained by virtue of subsection (3).

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- (5) No person is required by virtue of this section to provide any information which the person could not be compelled to give in evidence in civil proceedings in the High Court or, in Scotland, the Court of Session.

**32Y Certificate purchase orders: corresponding provision**

- (1) This section applies where the Secretary of State exercises a listed power in the making of a certificate purchase order.
- (2) The Secretary of State must—
- (a) so far as the order is made for a GB purpose, exercise the listed power in the way that the Secretary of State considers will replicate the effect of provision contained in a renewables obligation order (whenever made, and whether or not made by the Secretary of State) by virtue of the equivalent GB power;
  - (b) so far as the order is made for a NI purpose, exercise the listed power in the way that the Secretary of State considers will replicate the effect of provision contained in an order under Article 52 of the 2003 NI Order (whenever made) by virtue of the equivalent NI power.
- (3) The duty in subsection (2) to exercise any listed power in the way mentioned in that subsection applies only to the extent that it appears to the Secretary of State that—
- (a) it is reasonably practicable to exercise the listed power in that way, and
  - (b) exercising the power in that way is not inconsistent with other duties or requirements of the Secretary of State (whether arising under this Act or another enactment, by virtue of any EU obligation or otherwise).
- (4) In the Table—
- (a) a “listed power” is any power specified in the first column;
  - (b) the “equivalent GB power”, in relation to a listed power, is the power specified in the corresponding entry in the second column;
  - (c) the “equivalent NI power”, in relation to a listed power, is the power specified in the corresponding entry in the third column, and in that column references to an Article are to an Article of the 2003 NI Order.

<i>Listed power</i>	<i>Equivalent GB power</i>	<i>Equivalent NI power</i>
Section 32O(2)(a)	Sections 32A(2)(a) and 32G(2)(a)	Articles 53(2)(a) and 55(2)(a)
Section 32O(2)(b)	Sections 32A(2)(b) and 32G(2)(c)	Articles 53(2)(b) and 55(2)(c)
Section 32O(2)(c)	Section 32G(2)(e)	Article 55(2)(e)
Section 32O(2)(f)	Section 32A(2)(c)	Article 53(2)(c)
Section 32S	Section 32B	---
Section 32T	---	Article 54
Section 32U(5) and (6)	Section 32C(5) and (6)	Article 54A(5) and (6)

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<i>Listed power</i>	<i>Equivalent GB power</i>	<i>Equivalent NI power</i>
Section 32V(1)	Section 32D(1)	Article 54B(1)
Section 32W(5) to (8)	Section 32E(4) to (6) and (8)	Article 54C(4) to (7)
Section 32X	Section 32J	Article 55C
Section 32Z2(2) (so far as relating to definition of “renewable sources”) and (3)	Section 32M (so far as relating to that definition) and (2)	Article 55F(1) (so far as relating to that definition) and (2)
Section 32Z2(9)	Section 32M(7)	Article 55F(3)

- (5) The duty in subsection (2), so far as it has effect in relation to the exercise of the listed power under section 32V(1) to specify different amounts of electricity in relation to different cases or circumstances, applies only to the first exercise of that listed power.
- (6) The relevant part of Great Britain to which a renewables obligation order relates may be ignored for the purposes of subsection (2)(a).
- (7) It does not matter for the purposes of subsection (2) whether or not a renewables obligation order, or an order made under Article 52 of the 2003 NI Order, is in force at the time when the listed powers in question are being exercised.
- (8) In this section—
- “2003 NI Order” means the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6));
- “GB purpose” means the purpose of imposing the certificate purchase obligation on the purchasing body of GB certificates;
- “NI purpose” means the purpose of imposing the certificate purchase obligation on the purchasing body of NI certificates.

### **32Z Certificate purchase orders: general provision**

- (1) A certificate purchase order may—
- (a) make further provision as to the functions of the relevant authority in relation to matters dealt with by the order;
  - (b) make transitional provision and savings;
  - (c) provide for anything falling to be calculated or otherwise determined under the order to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the order;
  - (d) make different provision for different cases or circumstances.
- (2) Provision made by virtue of subsection (1)(b) may, in particular, include provision for—
- (a) renewables obligation certificates issued in respect of a period before the imposition of the certificate purchase obligation to be treated as if they were GB certificates issued in respect of a subsequent period for which the order is in force;



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- (b) Northern Ireland RO certificates issued in respect of a period before the imposition of the certificate purchase obligation to be treated as if they were NI certificates issued in respect of a subsequent period for which the order is in force.
- (3) Provision made by virtue of subsection (1)(d) may, in particular, make—
  - (a) different provision in relation to different suppliers;
  - (b) different provision in relation to generating stations of different descriptions;
  - (c) different provision in relation to different localities or different parts of the United Kingdom.
- (4) In subsection (3) “supplier” means an electricity supplier or a Northern Ireland supplier.
- (5) The Authority and the Northern Ireland authority may enter into arrangements for the Authority to act on behalf of the Northern Ireland authority for, or in connection with, the carrying out of any functions conferred on the Northern Ireland authority under, or for the purposes of, a certificate purchase order.
- (6) The duties imposed on the Secretary of State—
  - (a) by section 3A (principal objective and general duties in carrying out functions under this Part), and
  - (b) by section 132(2) of the Energy Act 2013 (duties in relation to strategy and policy statement),do not apply in relation to the exercise of a power under section 32N to make a certificate purchase order so far as it is made for or in connection with imposing the certificate purchase obligation on the purchasing body of NI certificates.

### **32Z1 Certificate purchase orders: procedure**

- (1) Before making a certificate purchase order, the Secretary of State must consult—
  - (a) the Authority,
  - (b) the Northern Ireland authority,
  - (c) the Council,
  - (d) the General Consumer Council for Northern Ireland,
  - (e) such electricity suppliers and Northern Ireland suppliers that may be required to pay the certificate purchase levy as the Secretary of State considers appropriate,
  - (f) such generators of electricity from renewable sources as the Secretary of State considers appropriate, and
  - (g) such other persons, if any, as the Secretary of State considers appropriate.
- (2) A certificate purchase order is not to be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (3) The Secretary of State must, subject to subsection (5), consult the Scottish Ministers before making a certificate purchase order that extends to Scotland.

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- (4) The Secretary of State must, subject to subsection (5), obtain the consent of the Northern Ireland department before making a certificate purchase order that extends to Northern Ireland.
- (5) Except as provided by subsection (6), the Secretary of State is not required to—
- (a) consult the Scottish Ministers under subsection (3), or
  - (b) obtain the consent of the Northern Ireland department under subsection (4),
- in respect of any provision of a certificate purchase order that is made by virtue of section 32O(2)(m), 32P or 32Q (which together confer power to make provision about the certificate purchase levy).
- (6) Designation of the Northern Ireland department as the administrator of the certificate purchase levy by virtue of section 32P(8)(b) requires the consent of that department.

### **32Z2 Interpretation of sections 32N to 32Z2**

- (1) In this section and sections 32N to 32Z1 (“the relevant sections”), the following terms have the meanings given in section 32M(1)—
- “fossil fuel” (but see subsection (4));
  - “generated”;
  - “Northern Ireland authority”;
  - “Northern Ireland supplier”;
  - “renewables obligation certificate”;
  - “renewables obligation order”.
- (2) In the relevant sections—
- “administrator”, in relation to the certificate purchase levy, is to be construed in accordance with section 32P(7) to (10);
  - “banding provision” is to be construed in accordance with section 32V(3);
  - “CFD counterparty” has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2013 (see section 7 of that Act);
  - “certificate purchase levy” is to be construed in accordance with section 32P;
  - “certificate purchase order” is to be construed in accordance with section 32N;
  - “the certificate purchase obligation” is to be construed in accordance with section 32N(3);
  - “distribution system” includes a distribution system within the meaning of Part 2 of the Electricity (Northern Ireland) Order 1992, and “distributing” is to be construed accordingly;
  - “GB certificate” is to be construed in accordance with section 32S;
  - “NI certificate” is to be construed in accordance with section 32T;
  - “the Northern Ireland department” means the Department of Enterprise, Trade and Investment;
  - “Northern Ireland RO certificate” means a certificate issued by the Northern Ireland authority in accordance with provision included

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in an order under Article 52 of the Energy (Northern Ireland) Order 2003;

“the purchasing body of GB certificates” is to be construed in accordance with section 32N(4);

“the purchasing body of NI certificates” is to be construed in accordance with section 32N(5);

“relevant authority” means—

- (a) in relation to GB certificates, the Authority;
- (b) in relation to NI certificates, the Northern Ireland authority;

“relevant purchasing body” means—

- (a) in relation to GB certificates, the purchasing body of GB certificates;
- (b) in relation to NI certificates, the purchasing body of NI certificates;

“renewable sources” means sources of energy other than fossil fuel or nuclear fuel, but includes waste of which not more than a specified proportion is waste which is, or is derived from, fossil fuel;

“specified”, in relation to a certificate purchase order, means specified in the order;

“transmission system” includes a transmission system within the meaning of Part 2 of the Electricity (Northern Ireland) Order 1992, and “transmitting” is to be construed accordingly.

- (3) For the purposes of the definition of “renewable sources”, a certificate purchase order may make provision—
  - (a) about what constitutes “waste”;
  - (b) about how the proportion of waste which is, or is derived from, fossil fuel is to be determined;
  - (c) about what, subject to such exceptions as may be specified, constitutes sufficient evidence of that proportion in any particular case;
  - (d) authorising the relevant authority, in specified circumstances, to require an operator of a generating station to arrange—
    - (i) for samples of any fuel used (or to be used) in the generating station, or of any gas or other substance produced as a result of the use of such fuel, to be taken by a person, and analysed in a manner, approved by the relevant authority;
    - (ii) for the results of that analysis to be made available to the relevant authority.
- (4) In the application of the relevant sections to Northern Ireland, “fossil fuel” includes peat.
- (5) In the relevant sections “Northern Ireland” does not include any part of the territorial sea of the United Kingdom, but this is subject to subsection (6).
- (6) A certificate purchase order may provide that “Northern Ireland” includes the territorial sea adjacent to Northern Ireland.
- (7) An Order in Council under section 98(8) of the Northern Ireland Act 1998 (apportionment of sea areas) has effect for the purposes of this section if, or to the extent that, the Order is expressed to apply—

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- (a) by virtue of this subsection, for those purposes, or
  - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.
- (8) References in the relevant sections to the supply of electricity to customers in Northern Ireland are to be construed in accordance with the definition of “supply” in Article 3 of the Electricity (Northern Ireland) Order 1992.
- (9) A certificate purchase order may make provision, for the purposes of the relevant sections, about the circumstances in which electricity is to be regarded as having been supplied—
- (a) to customers in Great Britain;
  - (b) to customers in Northern Ireland.”
- (3) In section 106 (regulations and orders), in subsection (2)(b) after “32LA,” (as inserted by section 55(3))” insert “32N, 32R(4),”.
- (4) In section 113 (extent etc), in subsection (3), at the beginning of the list (before the entry for sections 65 to 70) insert “Sections 32N to 32Z2.”.

## CHAPTER 8

### EMISSIONS PERFORMANCE STANDARD

#### 57 Duty not to exceed annual carbon dioxide emissions limit

- (1) The operator of any fossil fuel plant must secure that the emissions of carbon dioxide from it that are attributable to the use of fossil fuel do not exceed EL tonnes of carbon dioxide (“the emissions limit”) in any year, where—

$$EL = R \times C \times 7.446$$

and—

R is the statutory rate of emissions, in g/kWh;

C is the installed generating capacity, in MW, of the electricity generating station comprised in the fossil fuel plant.

- (2) Until (and including) 2044, the statutory rate of emissions is 450 g/kWh.
- (3) In this Chapter, “fossil fuel plant” means an electricity generating station which satisfies the conditions in subsection (4), together with any associated gasification plant and any associated CCS plant.
- (4) Those conditions are that the generating station—
- (a) is constructed pursuant to a relevant consent given or made on or after the date on which subsection (1) comes into force, and
  - (b) uses—
    - (i) fossil fuel, or
    - (ii) fuel produced by gasification plant.
- (5) Subsection (1) is subject to—
- (a) section 58, and
  - (b) any provision made by or under regulations made under subsection (6).

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- (6) The Secretary of State may by regulations—
- (a) make provision about the interpretation of the duty imposed by subsection (1) (“the emissions limit duty”);
  - (b) make any provision mentioned in Schedule 4 (application of emissions limit duty to additional cases or subject to modifications).
- (7) Regulations under subsection (6)(a) may, in particular, make provision—
- (a) for determining whether gasification plant or CCS plant (including any CCS plant associated with gasification plant) is associated with a generating station;
  - (b) for determining the emissions from fossil fuel plant;
  - (c) for the use of fossil fuel—
    - (i) for operating plant that is ancillary to a generating station for safety purposes, or in an emergency, or
    - (ii) by a network generating station at a time when it is not exporting to a network,to be disregarded for any of the purposes of this Chapter;
  - (d) for determining (whether by apportionment or otherwise) which emissions from fossil fuel plant are attributable to the use of fossil fuel;
  - (e) for determining when plant ceases to be, or to be part of, fossil fuel plant;
  - (f) specifying the meaning of any of the following expressions—
    - (i) “operator”, in relation to fossil fuel plant;
    - (ii) “installed generating capacity”;
    - (iii) “constructed pursuant to a relevant consent”, in relation to an electricity generating station;
  - (g) specifying any category of emissions by reference to provision made, or that may from time to time be made, by or under regulations implementing the ETS Directive.
- (8) Provision that may be made by virtue of subsection (7)(d) includes provision for treating emissions attributable to the supply of heat to customers from combined heat and power plant as not being attributable to the use of fossil fuel.

## **58 Introduction of carbon capture and storage: exemption from emissions limit**

- (1) The emissions limit duty does not apply during the exemption period in relation to fossil fuel plant for which there is a complete CCS system.
- (2) For this purpose, a complete CCS system, in relation to fossil fuel plant, is a system of plant and facilities for—
- (a) capturing some or all of the carbon dioxide (or any substance consisting primarily of carbon dioxide) that is produced by, or in connection with, generation of electricity by the generating station comprised in the fossil fuel plant,
  - (b) transporting the carbon dioxide (or substance) captured, and
  - (c) disposing of it by way of permanent storage.
- (3) The exemption period for any fossil fuel plant is the period—
- (a) beginning with the first day on which the fossil fuel plant and its complete CCS system are ready for use, and

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- (b) ending with—
  - (i) the expiry of 3 years beginning with that day, or
  - (ii) 31 December 2027,
 whichever is earlier.
- (4) In subsection (3), “use” includes testing in connection with the generation of electricity on a commercial scale.
- (5) Subsection (1) is subject to any provision made by regulations under section 57(6)(b).

## **59 Suspension etc of emissions limit in exceptional circumstances**

- (1) This section applies where an appropriate authority considers that there is an electricity shortfall, or a significant risk of an electricity shortfall.
- (2) Where this section applies, the appropriate authority may direct that, in relation to relevant plant, the emissions limit duty is to be treated as—
  - (a) suspended for a period specified in the direction, or
  - (b) modified for a period specified in the direction.
- (3) For the purposes of this section, there is an electricity shortfall when—
  - (a) the electricity available in Great Britain is insufficient to meet demands in Great Britain, or
  - (b) the electricity available in Northern Ireland is insufficient to meet demands in Northern Ireland.
- (4) For this purpose—
  - (a) electricity available in Great Britain or Northern Ireland includes electricity that is available there by virtue of an electricity interconnector (within the meaning of Part 1 of EA 1989), and
  - (b) subject to that, it is for the appropriate authority to determine what is to be regarded as available electricity.
- (5) Before giving a direction under this section, the Secretary of State must consult—
  - (a) the Scottish Ministers,
  - (b) the Welsh Ministers, and
  - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (6) As soon as practicable after giving a direction under this section, the Secretary of State must lay before Parliament a document containing—
  - (a) a copy of the direction, and
  - (b) a statement of the Secretary of State’s reasons for making the direction.
- (7) Before giving a direction under this section, the Department of Enterprise, Trade and Investment must consult such persons as it considers it appropriate to consult.
- (8) As soon as practicable after giving a direction under this section, the Department of Enterprise, Trade and Investment must lay before the Northern Ireland Assembly a document containing—
  - (a) a copy of the direction, and
  - (b) a statement of the Department’s reasons for making the direction.
- (9) A direction under this section—

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- (a) is to be made in writing;
  - (b) may include incidental, supplementary and transitional provision;
  - (c) may be varied or revoked by a further direction under this section.
- (10) Provision that may be made by virtue of subsection (9)(b) includes, in particular, provision imposing requirements on enforcing authorities (within the meaning of Schedule 5) for Great Britain or Northern Ireland, as the case may be.
- (11) Each appropriate authority—
- (a) must issue (and may from time to time revise) a statement of the Secretary of State’s or, as the case may be, the Department’s policy in relation to making directions under this section,
  - (b) must publish the up-to-date text of the statement whenever it is issued or revised, and
  - (c) must have regard to the statement in making any direction under this section.
- (12) For the purposes of this section—
- “appropriate authority” means—
    - (a) the Secretary of State, or
    - (b) the Department of Enterprise, Trade and Investment;
  - “relevant generating station” means a generating station which satisfies paragraphs (a) and (b) of section 57(4);
  - “relevant plant” means—
    - (a) in relation to a direction by the Secretary of State, fossil fuel plant which consists of or includes a relevant generating station in Great Britain;
    - (b) in relation to a direction by the Department of Enterprise, Trade and Investment, fossil fuel plant which consists of or includes a relevant generating station in Northern Ireland.

## **60 Monitoring and enforcement**

- (1) It is the duty of the appropriate national authority to make arrangements for monitoring compliance with, and enforcement of, the emissions limit duty.
- (2) The appropriate national authority may by regulations make any provision mentioned in Schedule 5 (monitoring compliance with, and enforcement of, the emissions limit duty).
- (3) The arrangements under subsection (1) must include arrangements for giving effect to directions under section 59 (and, in particular, for compliance by enforcing authorities with any requirements imposed on them under subsection (10) of that section).
- (4) In this section (and Schedule 5), the “appropriate national authority” means—
  - (a) in relation to England, the Secretary of State;
  - (b) in relation to Scotland, the Scottish Ministers;
  - (c) in relation to Wales, the Welsh Ministers;
  - (d) in relation to Northern Ireland, the Department of Environment.
- (5) Subsection (4) is subject to paragraph 5 of Schedule 5 (which provides for the Secretary of State to make certain provision for Scotland, Wales and Northern Ireland).

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## 61 Interpretation of Chapter 8

(1) In this Chapter—

“carbon capture and storage technology” means technology for doing, or contributing to the doing of, any of the following things—

- (a) capturing carbon dioxide (or any substance consisting primarily of carbon dioxide) that has been produced by, or in connection with, generation of electricity on a commercial scale;
- (b) transporting such carbon dioxide (or substance) that has been captured;
- (c) disposing of such carbon dioxide (or substance) that has been captured, by way of permanent storage;

“CCS plant” means plant, or a system of plant and facilities, that uses, or is capable of using, carbon capture and storage technology;

“distribution system” has the meaning given by section 4(4) of EA 1989 (and “distributed” is to be read accordingly);

“emissions limit duty” means the duty imposed by section 57(1);

“ETS Directive” means Directive [2003/87/EC](#) of the European Parliament and of the Council (as amended from time to time);

“fossil fuel” means—

- (a) coal;
- (b) lignite;
- (c) peat;
- (d) natural gas (within the meaning of the Energy Act 1976);
- (e) crude liquid petroleum;
- (f) bitumen;
- (g) any substance which—
  - (i) is produced directly or indirectly from a substance mentioned in paragraphs (a) to (f) for use as a fuel, and
  - (ii) when burned, produces a greenhouse gas (within the meaning given in section 92 of the Climate Change Act 2008);

“fossil fuel plant” has the meaning given by section 57(3);

“gasification plant” means plant which—

- (a) uses fossil fuel, and
- (b) produces fuel for use in an electricity generating station;

“network generating station” means a station that exports to a network;

“relevant consent” means—

- (a) consent granted under section 36 of EA 1989 or Article 39 of the Electricity (Northern Ireland) Order 1992 ([S.I. 1992/231 \(N.I. 1\)](#)), or
- (b) an order granting development consent under the Planning Act 2008;

“transmission system” has the meaning given by section 4(4) of EA 1989;

“year”, except in section 58, means any calendar year for which the emissions limit is defined by section 57.

(2) For the purposes of this Chapter, a generating station exports to a network when it is generating any electricity that is conveyed from it by means of a transmission system or is distributed by means of a distribution system.



## **62 Regulations under Chapter 8**

- (1) Any regulations made by the Secretary of State or the Welsh Ministers under this Chapter must be made by statutory instrument.
- (2) Any power to make regulations under this Chapter that is exercisable by the Department of Environment is to be exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (3) An instrument containing—
  - (a) regulations under section 57 (whether or not also containing regulations by the Secretary of State under section 60), or
  - (b) regulations by the Secretary of State under section 60 which amend or repeal any provision of primary legislation,may not be made unless a draft has been laid before and approved by a resolution of each House of Parliament.
- (4) Any other instrument containing regulations made by the Secretary of State under section 60 is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) If, but for this subsection, an instrument containing regulations by the Secretary of State under this Chapter would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.
- (6) Regulations by the Scottish Ministers under section 60 are—
  - (a) if they amend or repeal any provision of primary legislation, subject to the affirmative procedure;
  - (b) otherwise, subject to the negative procedure.
- (7) An instrument containing regulations by the Welsh Ministers under section 60—
  - (a) may not be made if the regulations amend or repeal any provision of primary legislation unless a draft has been laid before, and approved by a resolution of, the National Assembly for Wales;
  - (b) otherwise, is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (8) Statutory rules containing regulations by the Department of Environment under section 60 are—
  - (a) if the regulations amend or repeal any provision of primary legislation, subject to affirmative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954), and
  - (b) otherwise, subject to negative resolution (within the meaning of section 41(4) of that Act).
- (9) Any regulations under this Chapter may—
  - (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.

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- (10) Regulations under section 57 that apply in relation to Northern Ireland may be made only with the consent of the Department of Enterprise, Trade and Investment.
- (11) Before making any regulations under section 57 or 60, the Secretary of State must consult—
  - (a) in the case of regulations under section 57 that will apply in relation to Scotland or Wales, the Scottish Ministers or the Welsh Ministers, respectively, and
  - (b) in any case, such persons (or such other persons) as the Secretary of State considers it appropriate to consult.
- (12) Before making any regulations under section 60, the Scottish Ministers or the Welsh Ministers must consult such persons as they think appropriate.
- (13) Subsections (11) and (12) may be satisfied by consultation before, as well as after, the passing of this Act.

## CHAPTER 9

### MISCELLANEOUS

#### **63 Exemption from liability in damages**

- (1) The Secretary of State may include in regulations under section 6 or 27, or under paragraph 6 of Schedule 2, provision that—
  - (a) the national system operator,
  - (b) any director of the national system operator, or
  - (c) any employee, officer or agent of the national system operator,
 is not liable in damages for anything done or omitted in the exercise or purported exercise of a relevant function specified in the regulations.
- (2) A relevant function is a function conferred by or by virtue of Chapter 2, 3 or 4.
- (3) Provision made by virtue of subsection (1) may not exempt a person from liability for an act or omission which—
  - (a) is shown to be in bad faith;
  - (b) is unlawful by virtue of section 6(1) of the Human Rights Act 1998 (public authorities not to act incompatibly with convention rights);
  - (c) is a breach of a duty owed by virtue of section 27(4) of EA 1989 (compliance with final or provisional order under that Act).
- (4) Whenever—
  - (a) the Secretary of State makes or revokes regulations of a kind mentioned in subsection (1) or exercises a modification power under section 26 or 37 or paragraph 19 of Schedule 2, and
  - (b) provision is not in force under subsection (1) in respect of a relevant function,
 the Secretary of State must publish a statement of the reasons why no such provision is in force.

- (5) In this section “national system operator” means the person operating the national transmission system for Great Britain (and for this purpose “transmission system” has the same meaning as in EA 1989 - see section 4(4) of that Act).

#### **64 Licence modifications: general**

- (1) This section applies in relation to a power to make modifications conferred by—
- (a) section 26, 37, 45, 49 or 50, or
  - (b) paragraph 19 of Schedule 2.
- (2) Before making modifications under a power to which this section applies (“a relevant power”) the Secretary of State must lay a draft of the modifications before Parliament.
- (3) If, within the 40-day period, either House of Parliament resolves not to approve the draft, the Secretary of State may not take any further steps in relation to the proposed modifications.
- (4) If no such resolution is made within that period, the Secretary of State may make the modifications in the form of the draft.
- (5) Subsection (3) does not prevent a new draft of proposed modifications being laid before Parliament.
- (6) In this section “40-day period”, in relation to a draft of proposed modifications, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).
- (7) For the purposes of calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (8) A relevant power—
- (a) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);
  - (b) may be exercised differently in different cases or circumstances;
  - (c) includes a power to make incidental, supplementary, consequential or transitional modifications.
- (9) Provision included in a licence, or in a document or agreement relating to licences, by virtue of a relevant power—
- (a) may make different provision for different cases;
  - (b) need not relate to the activities authorised by the licence;
  - (c) may do any of the things authorised for licences of that type by section 7(2A), (3), (4) or (6A) of EA 1989.
- (10) The Secretary of State must publish details of any modifications made under a relevant power as soon as reasonably practicable after they are made.
- (11) If under a relevant power the Secretary of State makes modifications of the standard conditions of a licence, the Authority must—
- (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and

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(b) publish the modification.

- (12) A modification made under a relevant power of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of EA 1989.
- (13) The power conferred by a relevant power to “modify” (in relation to licence conditions or a document) includes a power to amend, add to or remove, and references to modifications are to be construed accordingly.

## **65 Consequential amendments**

- (1) In section 3A of EA 1989 (principal objective and general duties), in subsection (2) (b) for “or sections 26 to 29 of the Energy Act 2010” substitute “, sections 26 to 29 of the Energy Act 2010 or Part 2 of the Energy Act 2013”.
- (2) In section 33(1) of the Utilities Act 2000 (standard conditions of electricity licences)—
- (a) after paragraph (e) omit “or”;
  - (b) after paragraph (f) insert “or
  - (g) under the Energy Act 2013.”.
- (3) In section 137(3) of the Energy Act 2004 (standard conditions of transmission licences)—
- (a) after paragraph (d) omit “or”;
  - (b) after paragraph (e) insert “, or
  - (f) under the Energy Act 2013.”.
- (4) In section 146(5) of the Energy Act 2004 (standard conditions for electricity interconnectors), for “or under section 98 of the Energy Act 2011” substitute “, under section 98 of the Energy Act 2011 or under section 37 or 45 of the Energy Act 2013.”.

## **66 Review of certain provisions of Part 2**

- (1) As soon as reasonably practicable after the end of the period of 5 years beginning with the day on which this Act is passed, the Secretary of State must carry out a review of the provisions of the following Chapters of this Part—
- (a) Chapter 2 (contracts for difference);
  - (b) Chapter 3 (capacity market);
  - (c) Chapter 5 (conflicts of interest and contingency arrangements);
  - (d) Chapter 6 (access to markets);
  - (e) Chapter 7 (the renewables obligation: transitional arrangements);
  - (f) Chapter 8 (emissions performance standard).
- (2) The Secretary of State must set out the conclusions of the review in a report.
- (3) The report must, in particular—
- (a) set out the objectives of the provisions of each Chapter subject to review,
  - (b) assess the extent to which those objectives have been achieved, and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which those objectives could be achieved in a way that imposes less regulation.

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(4) The Secretary of State must lay the report before Parliament.