

SCHEDULES

SCHEDULE 2

Section 44

INVESTMENT CONTRACTS

PART 1

INTRODUCTORY

Meaning of “investment contract”

- 1 (1) In this Schedule an “investment contract” means a contract with an electricity generator which—
- (a) is entered into by the Secretary of State, whether before or after this Schedule comes into force, on or before the earlier of 31st December 2015 and the date on which a definition of an “eligible generator” first comes into force by virtue of section 10(3),
 - (b) if it relates to an electricity generating station in Northern Ireland, is entered into with the consent of the Department of Enterprise, Trade and Investment,
 - (c) includes an obligation for the parties to make payments under the contract based on the difference between a strike price and a reference price in relation to electricity generated, and
 - (d) is laid before Parliament in accordance with sub-paragraph (5).
- (2) If the contract is entered into before the coming into force of this Schedule, the obligation referred to in sub-paragraph (1)(c) must be conditional on the being in force of this Schedule.
- (3) In sub-paragraph (1)—
- “electricity generator”, in relation to an investment contract, means—
 - (a) a person who at the time the contract is entered into intends to establish an electricity generating station or alter an existing station;
 - (b) a person who at that time intends to operate or participate in the operation of an electricity generating station that is to be established or altered;
 - (c) a person who at that time has an interest in a company falling within paragraph (a) or (b);
 - “reference price” means the sum that is specified in, or determined under, the contract as the reference price in respect of electricity generated in the period specified in, or determined under, the contract;
 - “Northern Ireland” includes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Northern Ireland;
 - “strike price” means the sum that is specified in, or determined under, the contract as the strike price in respect of electricity generated in the period specified in, or determined under, the contract.

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- (4) In the case of a contract entered into with more than one person, the reference in sub-paragraph (1)(c) to the parties is a reference to the Secretary of State and any of those persons who is an electricity generator.
- (5) A contract is laid before Parliament in accordance with this sub-paragraph if it is laid by the Secretary of State at any time after the introduction into Parliament of the Bill that becomes this Act—
 - (a) with a statement falling within sub-paragraph (6), and
 - (b) after the Secretary of State has excluded from the contract any confidential information (see paragraph 3).
- (6) A statement falls within this sub-paragraph if it is a statement—
 - (a) that the Secretary of State considers that payments falling within sub-paragraph (1)(c) which would be made under the contract would encourage low carbon electricity generation,
 - (b) that the Secretary of State considers that without the contract there is a significant risk that the electricity generation to which the contract relates will not occur or will be significantly delayed, and
 - (c) summarising the regard that the Secretary of State has had, in deciding to enter the contract, to the matters set out in subsection (2) of section 5.
- (7) In sub-paragraph (6) “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; and “greenhouse gas” has the meaning given by section 92(1) of the Climate Change Act 2008.
- (8) The Secretary of State must publish an investment contract in the form in which it was laid before Parliament as soon as reasonably practicable after it is laid.

Varied investment contract

- 2 (1) An investment contract is a “varied investment contract” for the purposes of this paragraph if the variation—
 - (a) is agreed at any time before or after this Schedule comes into force, and
 - (b) will, in the opinion of the Secretary of State, materially increase the likely cost to consumers of electricity.
- (2) A varied investment contract is an “investment contract” for the purposes of this Schedule only if it is laid before Parliament (at any time after the introduction into Parliament of the Bill that becomes this Act)—
 - (a) with a statement of why, having regard to the likely cost to consumers of electricity, the Secretary of State believes that the variation is appropriate, and
 - (b) after the Secretary of State has excluded from it any confidential information (see paragraph 3).
- (3) The Secretary of State must publish a varied investment contract in the form in which it was laid before Parliament as soon as reasonably practicable after it is laid.
- (4) This paragraph does not apply in respect of a variation which is made in accordance with the terms of an investment contract.

Confidential information

- 3 (1) For the purposes of paragraphs 1 and 2, “confidential information” means specified information to which sub-paragraph (3) applies and in relation to which it is an initial term of the contract that it should not be disclosed.
- (2) For the purposes of sub-paragraph (1)—
- (a) a term is an initial term if it is agreed at the time the investment contract is entered into or, in relation to a varied investment contract, at the time the variation is agreed;
 - (b) “specified” means specified in the initial term.
- (3) This sub-paragraph applies to information if it is—
- (a) not the strike price or the reference price;
 - (b) information which, in the opinion of the Secretary of State at the time the initial term is agreed, constitutes a trade secret;
 - (c) information the disclosure of which, in the opinion of the Secretary of State at that time, would or would be likely to prejudice the commercial interests of any person;
 - (d) information the disclosure of which would, in the opinion of the Secretary of State at that time, constitute a breach of confidence actionable by any person.

Interpretation for the purposes of this Schedule

- 4 (1) In this Schedule—
- “CFD” is to be construed in accordance with section 6(2);
 - “CFD counterparty” is to be construed in accordance with section 7(2);
 - “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));
 - “investment contract counterparty” is to be construed in accordance with paragraph 5;
 - “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);
 - “regulations” means regulations made under paragraph 6.
- (2) References in this Schedule to a CFD counterparty (apart from the references in paragraphs 9(1)(c) and (d) and 16) are to a CFD counterparty acting as a counterparty in relation to an investment contract (where any property, rights or liabilities under the contract have been transferred to the CFD counterparty by a scheme under paragraph 16).

Investment contract counterparty

- 5 (1) The Secretary of State may by order made by statutory instrument designate an eligible person to be a counterparty for investment contracts.
- (2) A person is eligible if the person is—
- (a) a company formed and registered under the Companies Act 2006, or

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- (b) a public authority, including any person any of whose functions are of a public nature.
- (3) A designation may be made only with the consent of the person designated.
- (4) The Secretary of State may exercise the power to designate so that more than one designation has effect under this paragraph, but only if the Secretary of State considers it necessary for the purpose of ensuring that—
 - (a) liabilities under an investment contract are met,
 - (b) arrangements entered into for purposes connected to an investment contract continue to operate, or
 - (c) directions given to an investment contract counterparty continue to have effect.
- (5) 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.
- (6) As soon as reasonably practicable after a designation ceases to have effect the Secretary of State must make a transfer scheme under paragraph 16 to ensure the transfer of all rights and liabilities under any investment contract to which the person who has ceased to be an investment contract counterparty was a party.
- (7) If necessary for the purposes of a transfer scheme required to be made by virtue of sub-paragraph (6), 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 paragraph.
- (8) Regulations may include provision about the period of time for which, and the circumstances in which, a person who has ceased to be an investment contract counterparty is to continue to be treated as an investment contract counterparty for the purposes of the regulations.

PART 2

REGULATIONS: GENERAL

Regulations for the purposes of investment contracts

- 6 (1) The Secretary of State may by regulations make further provision about or in connection with investment contracts.
- (2) The provision which may be made by regulations includes, but is not limited to, the provision described in this Schedule.
- (3) 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.

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- (4) Regulations are to be made by statutory instrument.
- (5) 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 any other provision)—
 - (a) the first regulations which make provision falling within paragraph 10,
 - (b) the first regulations which make provision falling within paragraph 11, or
 - (c) regulations which make provision falling within any other paragraph of Parts 1 to 3 of this Schedule.
- (6) Any other instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) If, but for this sub-paragraph, 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.

Supplier obligation

- 7 (1) Regulations may make provision for electricity suppliers to pay the Secretary of State for the purpose of enabling payments to be made under investment contracts.
- (2) Regulations must make provision for electricity suppliers to pay an investment contract counterparty or a CFD counterparty for the purpose of enabling payments to be made under investment contracts.
- (3) Regulations may make provision for electricity suppliers to pay the Secretary of State, an investment contract counterparty or a CFD counterparty for the purpose of enabling the person to whom the payments are made—
 - (a) to meet such other descriptions of 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.
- (4) In sub-paragraph (3)(a) “costs” means costs in connection with the performance of any function conferred by or by virtue of this Schedule.
- (5) Regulations may make provision to require electricity suppliers to provide financial collateral to the Secretary of State, an investment contract counterparty or a CFD counterparty (whether in cash, securities or any other form).
- (6) Regulations which make provision by virtue of sub-paragraph (1) or (2) for the payment of sums by electricity suppliers must impose on the person to whom such sums are to be paid a duty in relation to the collection of such sums.
- (7) Provision made by virtue of this paragraph may include provision for—
 - (a) the Secretary of State, an investment contract counterparty or a CFD counterparty to determine the form and terms of any financial collateral;
 - (b) the Secretary of State, an investment contract counterparty or 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;

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- (c) the issuing of notices by the Secretary of State, an investment contract counterparty or a CFD counterparty to require the payment or provision of such amounts;
 - (d) the enforcement of obligations arising under such notices.
- (8) Provision made by virtue of sub-paragraph (7)(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.
- (9) Provision made by virtue of sub-paragraph (7)(d) may include provision—
- (a) about costs;
 - (b) about interest on late payments under notices;
 - (c) about references to arbitration;
 - (d) about appeals.
- (10) Any sum which—
- (a) an electricity supplier is required by virtue of regulations to pay to the Secretary of State, an investment contract counterparty or 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 Secretary of State, the investment contract counterparty or the CFD counterparty (as the case may be) as a civil debt due to that person.

Payments to electricity suppliers

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

Application of sums

- 9 (1) Regulations may make provision for apportioning sums—
- (a) received by the Secretary of State, an investment contract counterparty or a CFD counterparty from electricity suppliers under provision made by virtue of paragraph 7;
 - (b) received by the Secretary of State, an investment contract counterparty or a CFD counterparty under an investment contract,
 - (c) received by a CFD counterparty from electricity suppliers under provision made by virtue of section 9;
 - (d) received by a CFD counterparty under a CFD,

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in circumstances where the Secretary of State, an investment contract counterparty or a CFD counterparty is unable fully to meet liabilities under an investment contract or a CFD.

- (2) Provision made by virtue of sub-paragraph (1) may include provision about the meaning of “unable fully to meet liabilities under an investment contract or a CFD”.
- (3) In making provision by virtue of sub-paragraph (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 the Secretary of State, an investment contract counterparty or a CFD counterparty.
- (5) Provision made by virtue of sub-paragraph (4) may include provision that sums are to be paid, or not to be paid, into the Consolidated Fund.

Information and advice

- 10 (1) Regulations may make provision about the provision and publication of information.
- (2) Provision made by virtue of sub-paragraph (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 an investment contract counterparty, 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 an investment contract counterparty, a CFD counterparty, the national system operator, electricity suppliers, the Authority, the Northern Ireland Authority for Utility Regulation, the Northern Ireland system operator or a generator who is party to an investment contract 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 an investment contract counterparty, a CFD counterparty, a generator who is party to an investment contract or the Northern Ireland system operator;
 - (e) for an investment contract counterparty or 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 sub-paragraph (2) “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)).
- (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 paragraph.

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Investment contracts: functions of the Authority

- 11 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 an investment contract.

Enforcement

- 12 (1) Regulations may include 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 Regulation 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 sub-paragraph (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)).

Consultation

- 13 (1) Before making regulations the Secretary of State must consult—
- (a) the Scottish Ministers,
 - (b) the Welsh Ministers,
 - (c) the Department of Enterprise, Trade and Investment, and
 - (d) such other persons as the Secretary of State considers it appropriate to consult.
- (2) Before making regulations which contain provision falling within paragraph 7, 8 or 14(3), the Secretary of State must also consult electricity suppliers.
- (3) Before making regulations which contain provision falling within paragraph 9, the Secretary of State must also consult electricity suppliers and any electricity generator who is party to an investment contract.
- (4) Before making regulations which contain provision falling within paragraph 11 or 12(1)(a), the Secretary of State must also consult the Authority.
- (5) Before making regulations which contain provision falling within paragraph 12(1)(a), the Secretary of State must also consult any person who is a holder of a licence under section 6(1)(d) of EA 1989.
- (6) Before making regulations which contain provision falling within paragraph 12(1)(b), the Secretary of State must also consult the Northern Ireland Authority for Utility Regulation and any person who is a holder of a licence under Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)).
- (7) If regulations impose requirements by virtue of paragraph 10(2), the Secretary of State must before making the regulations also consult any person upon whom a requirement is imposed.
- (8) The requirement to consult may be satisfied by consultation before, as well as consultation after, the passing of this Act.

PART 3

FURTHER PROVISION ABOUT AN INVESTMENT CONTRACT COUNTERPARTY AND A CFD COUNTERPARTY

Duties and liabilities of an investment contract counterparty and a CFD counterparty

- 14 (1) An investment contract counterparty and a CFD counterparty must act in accordance with—
- (a) any direction given by the Secretary of State by virtue of this Schedule;
 - (b) any provision included in regulations.
- (2) An investment contract counterparty and a CFD counterparty must exercise the functions conferred by or by virtue of this Schedule to ensure that it can meet its liabilities under any investment contract to which it is a party.
- (3) Regulations may make provision—
- (a) to require an investment contract counterparty or a CFD counterparty to enter into arrangements or to offer to contract for purposes connected to an investment contract;
 - (b) specifying things that an investment contract counterparty or a CFD counterparty may or must do, or things that an investment contract counterparty or CFD counterparty may not do;
 - (c) conferring on the Secretary of State further powers to direct an investment contract counterparty or CFD counterparty to do, or not to do, things specified in the regulations or the direction.
- (4) Provision made by virtue of sub-paragraph (3)(b) or (c) includes provision requiring consultation with, or the consent of, the Secretary of State in relation to—
- (a) the enforcement of obligations under an investment contract;
 - (b) a variation or termination of an investment contract;
 - (c) the settlement or compromise of a claim under an investment contract;
 - (d) the conduct of legal proceedings relating to an investment contract;
 - (e) the exercise of rights under an investment contract.
- (5) Regulations must include such provision as the Secretary of State considers necessary to ensure that an investment contract counterparty or a CFD counterparty can meet its liabilities under any investment contract to which it is a party.

Shadow directors, etc.

- 15 The Secretary of State is not, by virtue of the exercise of a power conferred by or by virtue of this Schedule, to be regarded as—
- (a) a person occupying in relation to an investment contract counterparty or a CFD counterparty the position of director;
 - (b) being a person in accordance with whose directions or instructions the directors of an investment contract counterparty or a CFD counterparty are accustomed to act;
 - (c) exercising any function of management in an investment contract counterparty or a CFD counterparty;
 - (d) a principal of an investment contract counterparty or a CFD counterparty.

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PART 4

TRANSFERS

Transfers

- 16 (1) The Secretary of State may make one or more schemes for the transfer of designated property, or designated rights or liabilities under an investment contract—
- (a) from the Secretary of State (“the transferor”) to a CFD counterparty (“the transferee”);
 - (b) from the Secretary of State (“the transferor”) to an investment contract counterparty (“the transferee”);
 - (c) from an investment contract counterparty (“the transferor”) to a CFD counterparty (“the transferee”);
 - (d) from a person who has ceased to be an investment contract counterparty (“the transferor”) to a person who is an investment contract counterparty (“the transferee”).
- (2) If a scheme provides for a CFD counterparty to be the transferee, regulations may provide for the investment contract to be treated to any extent as a CFD for the purposes of provision made by or by virtue of Chapter 2 of Part 2 of this Act.
- (3) Sub-paragraph (4) applies from the beginning of the first day on which all of the following three conditions are met, namely—
- (a) a definition of an “eligible generator” is in force by virtue of section 10(3) or the date is 1st January 2016 or later;
 - (b) a designation under section 7(1) has effect;
 - (c) provision required by section 9(1) to be made is in force.
- (4) The Secretary of State must in respect of each investment contract, within such period of time as the Secretary of State considers reasonable—
- (a) make a transfer scheme by virtue of sub-paragraph (1)(a) or (c) to ensure the transfer of all rights and liabilities under the investment contract, and
 - (b) make provision under sub-paragraph (2) for the investment contract to be treated as a CFD for the purposes of all provision made by or by virtue of Chapter 2 of Part 2 of this Act.
- (5) But sub-paragraph (4) does not apply to the extent that the Secretary of State considers it appropriate in all the circumstances of the case to disapply it.
- (6) On the transfer date, the designated property, rights and liabilities are transferred and vest in accordance with the scheme.
- (7) The rights and liabilities that may be transferred by a scheme include those arising under or in connection with a contract of employment.
- (8) A certificate by the Secretary of State that anything specified in the certificate has vested in any person by virtue of a scheme is conclusive evidence for all purposes of that fact.
- (9) In this paragraph and paragraph 17—
- “designated”, in relation to a scheme, means specified in or determined in accordance with the scheme;
 - “property” includes interests of any description;

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“the transfer date” means a date specified by a scheme as the date on which the scheme is to have effect.

- 17 (1) A scheme may make provision—
- (a) for anything done by or in relation to the transferor in connection with any property, rights or liabilities transferred by the scheme to be treated as done, or to be continued, by or in relation to the transferee;
 - (b) for references to the transferor in any agreement (whether written or not), instrument or other document relating to any property, rights or liabilities transferred by the scheme to be treated as references to the transferee;
 - (c) about the continuation of legal proceedings;
 - (d) for transferring property, rights or liabilities which could not otherwise be transferred or assigned;
 - (e) for transferring property, rights and liabilities irrespective of any requirement for consent which would otherwise apply;
 - (f) for preventing a right of pre-emption, right of reverter, right of forfeiture, right to compensation or other similar right from arising or becoming exercisable as a result of the transfer of property, rights or liabilities;
 - (g) for dispensing with any formality in relation to the transfer of property, rights or liabilities by the scheme;
 - (h) for transferring property acquired, or rights or liabilities arising, after the scheme is made but before it takes effect;
 - (i) for apportioning property, rights or liabilities;
 - (j) for creating rights, or imposing liabilities, in connection with property, rights or liabilities transferred by the scheme;
 - (k) for requiring the transferee to enter into any agreement of any kind, or for a purpose, specified in or determined in accordance with the scheme.
- (2) Sub-paragraph (1)(b) does not apply to references in primary legislation or in subordinate legislation.
- 18 A scheme may contain provision for the payment of compensation by the Secretary of State to any person whose interests are adversely affected by it.

PART 5

SUPPLEMENTARY

Licence modifications

- 19 (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 sub-paragraph (1) only for the purpose of—

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- (a) allowing or requiring services to be provided to the Secretary of State, an investment contract counterparty or a CFD counterparty;
 - (b) enforcing obligations under an investment contract.
- (3) Provision included in a licence, or in a document or agreement relating to licences, by virtue of the power under sub-paragraph (1) may in particular include provision of a kind that may be included in regulations.
- (4) Before making a modification under this paragraph, the Secretary of State must consult—
- (a) the Scottish Ministers,
 - (b) the Welsh Ministers,
 - (c) the holder of any licence being modified,
 - (d) electricity suppliers,
 - (e) the Department of Enterprise, Trade and Investment,
 - (f) the Authority, and
 - (g) such other persons as the Secretary of State considers it appropriate to consult.
- (5) Sub-paragraph (4) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

Expenditure

- 20 (1) There may be paid out of money provided by Parliament expenditure incurred by the Secretary of State for the purpose of making payments in respect of the Secretary of State's obligations under an investment contract, whether entered into before or after this Schedule comes into force.
- (2) There may be paid out of money provided by Parliament expenditure incurred by the Secretary of State for the purpose of, or in connection with—
- (a) obtaining advice and assistance in relation to investment contracts (including in relation to entering into an investment contract);
 - (b) the establishment of an investment contract counterparty;
 - (c) making payments or providing financial assistance to an investment contract counterparty.
- (3) Financial assistance or payments includes financial assistance or payments given subject to such conditions as may be determined by, or in accordance with arrangements made by, the Secretary of State; and such conditions may in particular in the case of a grant include conditions for repayment in specified circumstances.
- (4) In this paragraph, "financial assistance" means grants, loans, guarantees or indemnities, or any other kind of financial assistance.